United States Court of Appeals for the Second Circuit



APPENDIX

Original u/affedant og mouling 75-1022

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1022

UNITED STATES OF AMERICA,

Appellee,

-against-

ENRIQUE HERNANDEZ,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

GOVERNMENT'S APPENDIX

DAVID G. TRAGER, United States Attorney, Eastern District of New York. PAGINATION AS IN ORIGINAL COPY

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A 1

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

ENRIQUE HERNANDEZ.

71 Cr 874

Defendant.

STATE OF NEW YORK) SS:

PETITIONER ENRIQUE HERNANDEZ, being duly sworn, deposes and says:

THAT I am the defendant in the above-entitled case having been convicted at the trial before Hon. Jack B. Weinstein, U. S. District Judge and a judgment entered on February 18, 1972, sentencing the defendant to 15 years imprisonment and a fine of \$20,000.00.

THAT since February 18, 1972, I have been incarcerated and have prosecuted an appeal through the Second Circuit Court of Appeals and the Supreme Court of the United States. The decisions were all affirmed and I have approximately $12\frac{1}{2}$ years remaining on the original sentence.

THAT I was a co-defendant with Nicodemus Olate Romera and a co-conspirator with Celestino Valverde.

THAT although my case was brought in Federal Court, the arresting officers and all the witnesses, except for co-defendants, were police officers associated with the Special Investigations
Unit of the City Narcotics Department.

THAT one of the witnesses against me was an officer by the name of Sottile.

THAT prior to the trial there were certain wiretaps and wiretap warrants which were reviewed by the Court and found to be

Constitutionally correct.

THAT since that date specifically, May 28, 1974, in the Southern District of New York, in a case entitled U.S. v Novoa, 74 Cr. 229, before Hon. Inzer B. Wyatt, U. S. District Judge, Detective Sottile admitted on the witness stand that he had perjured himself in many warrant and wiretap applications.

THAT this evidence could not have been known by me until it was revealed in open court.

THAT this information was forwarded to me by Joseph I.

Stone, who is an attorney for one of the other defendants in the

Novoa case. The photostats of the trial minutes which seem

important are attached hereto.

THAT Mr. Sottile also referred at length to the arrests of Olate and Quintanilla on September 11, 1970.

THAT a great deal of this evidence was introduced in my trial by Sottile's testimony.

THAT I have also read many New York City newspapers where it seems a great percentage of the Narcotics Division SIU detectives have admitted perjury, illegal arrests, illegal wiretapping and general improper conduct.

THAT I have also been advised that in one case, $U_{\bullet}S_{\bullet}$ v Egan, you were the trial judge and heard some of the testimony of some of these detectives.

THAT because of Mr. Sottile's admissions of prior perjured testimony, it appears that the wiretap obtained in my case was possibly obtained as a result of perjured statements and that I should be entitled to a new hearing, for the government's case now rests on the perjury of a convicted felon. (I am also under the impression that Mr. Sottile has pleaded guilty to several violations having been arrested with other detectives from SIU.)

W

THAT Mr. Joseph I. Stone handled my case on appeal to the Second Circuit Court of Appeals and to the Supreme Court having been assigned under the Criminal Justice Act because I was declared a poor person.

THAT if possible, I am even poorer today than in 1972 and request that this petition be filed without payment of fees and that Mr. Stone be assigned to represent me in any further legal matters or if a hearing is scheduled where I will need a lawyer.

THAT Mr. Stone has assisted in preparing some of these papers and has clearly indicated that he will accept an assignment of the Court if so desired.

WHEREFORE, it is respectfully requested that the judgment and conviction entered in my case be set aside pursuant to Title 28 U.S.C. 2255 on the alternative that I be granted a full evidentiary hearing to bring forth these facts before the Court.

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Sworn to before me this

19 day of 5,2, 1974.

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THITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK ---X

INITED STATES OF AMERICA

NOTICE OF MOTION

71 Cr. 874

ENRIQUE HERNANDEZ,

Defendant.

SIRS:

PLEASE TAKE NOTICE that upon the judgment of conviction entered in the above-entitled case on February 18, 1972, and upon all prior proceedings, including the order of Hon. Jack E. Weinstein, U.S.D.J., dated July 22, 1974, and a further order dated August 7, 1974, and upon the affidavit of Joseph I. Stone, dated September 27, 1974, the undersigned will submit to Hon. Jack B. Weinstein, U.S.D.J., on the 11th day of October, 1974, a request.

ENFORCING the above orders or in the alternative, 1) Reversing the conviction previously entered against ENRIQUE HERNANDEZ; 2) Issuing a writ of habeas corpus bringing the defendant-realtor HERMANDEZ to the Federal House of Detention, 427 West Street, New York, New York; and for a further order,

RELEASING the defendant HERNANDEZ on reasonable bail and granting the defendant a default pursuant to Rule 55 of the Federal Rules of Civil Procedure and entering the judgment of default pursuant to Rule 55 of the Federal Rules of Civil Procedure; and for any further relief as this Court may deem just and proper.

Dated: New York, New York September 27, 1974 TO: DAVID TRAGER, ESQ. United States Attorney Eastern District of N.Y. United States Courthouse Brooklyn, N.Y.

Yours, etc.,

JOSEPH I. STONE Attorney for defendant 277 Broadway New York, New York 10007 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v
ENRIQUE HERNANDEZ,

Defendant.

STATE OF HEW YORK)SS:

COUNTY OF NEWYORK)SS:

JOSEPH I. STONE, being duly sworn, deposes and says:

That I am aware of a court order issued by Hon.

Jack B. Weinstein dated July 22, 1974, where the court stated,

"The United States Attorney shall file a response within thirty days."

That shortly after receiving this order, I accepted an appointment as counsel for Mr. Hernandez pursuant to the Criminal Justice Act and on August 6, 1974, I wrote a letter to the United States Attorney and to the court indicating that I would appear on behalf of Mr. Hernandez. On August 30, 1974, I wrote an additional letter to the court with a copy to the United States Attorney advising them that the orders of September 22nd and August 7th, 1974, had not been complied with. These letters were dated August 30th (as mentioned above) and September 10th, 1974. The September 10th letter was addressed to David Trager as United States Attorney and I have still not received an answer from the original motion submitted by Mr. Hernandez nor to any of my persistent letters.

That I am personally aware since Mr. Hernandez filed his original petition that other S.I.U. detectives have testified about still more illegal taps in Corso v. United States, 74 Civ. 720, before Hon. Edward Weinfeld; Detective Leuci testified as to an illegal wiretap on the phone of Peter Corso and Detective Louis D'Ambrosio testified as to illegal wiretaps on Merit Johnson and Detective Carl Aguilus testified as to illegal wiretaps which were allegedly unknown to Leuci and D'Ambrosio.

That as the investigations continue involving police officers of the Special Investigation Unit, it appears that there is an apparent pattern of corruption and illegal wiretapping, some of which has come before the courts and some which remain hidden by some of the perpetrators.

That in lieu of all the illegal activity surrounding the Special Investigation Unit, this court should order a new trial for petitioner Enrique Hernandez to ascertain whether the illegal taps previously testified to concerning co-defendants Olate and Quintinella were so tainted that everything thereafter would have been "fruits of the poison tree".

It is also respectfully submitted that no "minimization hearing" was ever afforded Hernandez that I am aware of and according to U.S. v. Bynum, 485 F. 2d 490, the government had a certain burden to sustain which has not yet been sustained.

Accordingly, judgment of conviction should be reversed, the defendant Hernandez be granted a new trial, reasonable bail be set and said judgment should be entered because of the deliberate default of the United States Government in failing to answer petitioner's affidavit and failing to comply with the orders of the Court.

Sworn to before me this 27th day of September, 1974.

JOSEPH I. STONE

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THE COURT: When you said that the money was split between the four detectives, were you including yourself in that group of four?

THE WITNESS: Yes, sir.

THE COURT: All right.

- Q Can you tell us what occurred in the car at this location that you just described to us?
 - A .The money was counted.
 - Q By whom?
- A By Fox and Novoa and I was given a share, Aguiluz got a share and they retained a share.
 - O How much money were you given?
- A Around \$1600 or \$1700. I don't remember the exact amount.
 - O Did you see how much money the others were given?
 - A They said it was an equal share.
 - Q Who said that?
 - 'A Fox, Novoa, Aguiluz.
- O Directing your attention to September 11, 1970, did you participate in the arrest of the defendants named Olace and Quintanilla in Manhattan?
 - A Yes, sir.
 - Q Who else assisted in that arrest?
 - A In the physical arrest was Aguiluz and myself.

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Did there come a time when you took those two defendants to a precinct?

- Yes, sir. A
- Could you tell us what precinct?
- The 18th.
- · At approximately what time of day were you at the 18th Precinct?

It was after 12.30 in the morning. Perhaps one or two in the morning when we finally got to the precinct.

Did there come a time when Detective Novoa arrived at the precinct?

- A Yes, sir.
- Will you tell us when Detective Novoa arrived what happened?

Detective Aguiluz told me that he had \$7000 which he had taken off Olace or Quintanilla and he told Detective Novoa the same thing and that we were going to divide the money equally between Novoa, Daly, who I don't recall being there, and myself and Aguiluz.

- And what occurred after that, if you recall?
- Detective Aguiluz gave me a share of that money.
- How much money did he give you?
- The exact amount was like between \$1500 and \$1700. I don't remember the exact amount.

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сp			Sottile	e-direct			968
	9	Aside from	m the si	ituation	you just me	entined	to
us,	did yo	u on other	occasio	ons with	detectives	other t	han
Dete	ctive	Novoa take	money :	from defe	endants and	divide	it?
	Λ	Yes, sir.					
	U	Approxima	taly ho	w many o	ther occani	on#?	
	A	λpproxima	tely th	ree or fo	our other o	ccasions	•
	Q	And did y	ou part	icipate :	in installi	ng illeg	al

A Yes, sir.

wiretaps?

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- Q On how many occasions did you do that?
- A Several occasions.
- Q Is this the first time Sergeant Sottile, that you are testifying to this information in public?
 - A Yes, sir.
- Q Have you been promised anything in return for your testimony in this case?
 - A No, no.

MR. COSTELLO: I can't hear him, your Honor.

o A In terms of what would happen to me, I have no promise at all, no.

THE COURT: Mr. Reporter, read the full answer.

Because of the noise Mr. Costello may not have heard it.

(Answer read.)

MR. GIULIAMI: No further questions, your

LETTER DATED NOVEMBER 12, 1974, FROM JOSEPH STONE ESQ. TO
HON. JACK B. WEINSTEIN A 10

Joseph J. Stone, P. C.
ATTORNEY AT LAW

277 Broadway, New Yorn

RECTOR 2-2270

November 12, 1974

Hon. Jack B. Weinstein United States District Judge Eastern District of New York United States Courthouse 225 Cadman Plaza West Brooklyn, New York

Re: U.S. v. Enrique Hernandez 71 Cr. 874

Dear Judge Weinstein:

I discussed Enrique Hernandez's legal position with him on November 11, 1974, and if he were to submit an affidavit to the court, he would allege the following facts.

That while incarcerated in West Street, Hernandez met ex-detective Joseph Novoa, who was recently convicted in the Southern District of New York. Novoa talked to Hernandez and informed him that Detectives James Sottile and Carl Aguiluz maintained an illegal wiretap on the Chile Lido Restaurant, located at 23rd Street and 7th Avenue, New York, New York. That this tap was on the restaurant from approximately June through October, 1970.

That Enrique Hernandez will allege that his brothers and co-defendants, Martin Hernandez and Victor Hernandez called his home from the Chile Lido Restaurant. Enrique Hernandez will also allege that co-conspirator Mario Sepulveda also called him from that phone, as did co-defendant Madeline Pineda. Enrique Hernandez would also testify that he himself used the Chile Lido phone, unaware of the illegal tap during the above-mentioned period of time. Enrique Hernandez also claims that he was never afforded a minimization hearing as to whether there was any at compt by the monitoring officers to limit certain phone calls and exclude certain privileged communications. That during this

11 Joseph J. Stone, P. C. ATTORNEY AT LAW 277 Broadway, New York, N. 9. 10007 -2-November 12. 1974 period of time, Mr. Hernandez called my office to discuss certain family legal business including a case involving his brother-inlaw in the Southern District of New York. Enrique Hernandez feels that all transcripts of all intercepted conversations should be made available to the court and that he should have as witnesses to ascertain the extent of the legality the following police officers: Joseph Novoa, now in Lewisburg Penitentiary; Police Officer Owen Brodeur; Nora Palmer; James Rogers; Lionel Tucket; James Sottile; Carl Aguiluz and Robert Luchi. Detective Luchi would be able to discuss at length many of the illegal taps that were prevalent during this period of time by the Special Investigations Unit. Mr. Hernandez is also aware that many of the abovenamed officers were called upon to testify at different governmental investigative agencies including the State Investigation Commission and the Police Department Internal Affairs Office and he feels that all transcripts of their testimony should be made available to him. I hope the government can provide these witnesses within the time specified and I will be happy to comply with the court's direction concerning the hearing of testimony. Thank you very much for your courtesy and consideration. Very truly yours, JOSEPH I. STONE JIS:ng cc : Charles Claymon, Esq. Ass't. U.S. Attorney Eastern District of New York cc : Mr. Enrique Hernandez 427 West Street New York, New York

SHELDON SILVERMAN
Acting Official Court Reporter

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Appearances:

DAVID G. TRAGER, Esq.
United States Attorney for the
Eastern District of New York

By: CHARLES CLAYMAN, Esq.
Assistant United States Attorney

JOSEPH STONE, Esq. Attorney for Defendant.

THE CLERK: Criminal cause for hearing, U.S.A. versus Enrique Hernandez.

THE COURT: How are you feeling, Mr. Hernandez?

THE DEFENDANT: Fine, your Honor, thank you.

THE COURT: Is your family all right?

THE DEFENDANT: Not quite.

THE COURT: No?

THE DEFENDANT: It's hard on them.

THE COURT: Yes, it is.

THE COURT: Do you want to produce your witnesses. This is a hearing.

MR. STONE: The Government gave me a memorandum about twenty minutes ago that I also gave to you.

I was under the impression that that issue had already been decided, whether we were entitled to a hearing or not.

THE COURT: I'll give you a hearing.

MR. CLAYMAN: Could the Government be heard?

THE COURT: Yes.

MR. CLAYMAN: I gave the memo to the Court

last night, but not to repeat what's in it, but

Mr. Hernandez brought a series of claims to the Court

and he's entitled to discover evidence, but that

simply isn't the case.

He claims -- he makes a sweeping, amorphous

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23 24 conclusory language that deals in vague generalities, and the corruption in SIU, Special Investigation Unit, illegal wire taps of a Detective Sottile spilled over to his case. He hasn't offered an iota of proof.

THE COURT: Let him produce the witnesses and go ahead.

MR. CLAYMAN: I received a letter from Mr. Stone whereby he asks not only for the officers who testified in the hearing, not only in the trial -not only for Mr. Sottile, but also Mr. Luci, Mr. Nuveou -- these are police officers who had nothing to do with the trial. These are police officers, as I'm sure the Court is aware, who are cooperating with the Government.

Before the Government will produce those witnesses, we'll ask for an offer of proof as to exactly what they're going to prove on the very narrow issue of newly discovered evidence.

THE COURT: Have you interviewed them?

MR. STONE: They're unavailable to me. They're in safekeeping. The Government has made no bones about that. I ask they be produced under the exclusive right of the Government.

THE COURT: Let's hear who you have first to

16 A 1 see if there's anything to this. 2 MR. STONE: I would like to call Detective 3 Sottile first. 4 THE COURT: Did this go up on appeal? 5 MR. CLAYMAN: Yes. 6 THE COURT: Let me have copies of the briefs 7 so it would refresh my recollection. It was tried 8 some time ago, wasn't it? 9 10 JAMES SOTTILE, called as a witness, being 11 first duly sworn by the Clerk of the Court, testified 12 as follows: 13 THE CLERK: Full name please, and spell your 14 last name for the record. 15 THE WITNESS: James Sottile, S-o-t-t-i-l-e. 16 DIRECT EXAMINATION 17 BY MR. STONE: 18 Mr. Sottile, are you still a police officer? 19 A No, sir. 20 Were you a police officer attached to the 21 Special Investigation Unit in 1970? 22 A Yes, sir.

Did you conduct an investigation where a Mr. Olate-Romero and Mr. Quintanilla were suspects?

Yes.

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A 17

1		Sottile-direct 6
2	Q	Did they frequent the Chile-Lindo Restaurant?
3	A	I had seen them there, yes.
4	Q	Do you know where that restaurant is?
5	A	West 23 Street.
6	Q	In Manhattan?
7	A	Yes.
8	Q	Did you testify in the case of United States
9	versus Joseph	Nuveou in the Southern District of New York?
10	A	Yes.
11	Q	During your testimony in that case, did you
12	state that yo	u maintained a series of illegal wire taps?
13	A	Yes.
14	Q	Did you specifically state that one of the
15	persons who w	as the target of your illegal wire tap was
16	Quintanilla a	and Olate-Romero?
17	A	Yes.
18	Q	Mr. Sottile, how many illegal wire taps did you
19	participate :	in from June 1970 through November 1970?
20		MR. CLAYMAN: I object, your Honor.
21		THE COURT: Sustained. Let's get to the issue
22	here.	
23	Q	Did you have an illegal wire tap at any time
24	on the Chile	-Lindo Restaurant between June and October of
25	19702	

One phone?

Q

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A Yes.

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Ω Was that the only illegal tap that was at
the Atkins Glass store listening post?

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MR. CLAYMAN: Objection.

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THE COURT: Why do you need more?

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MR. STONE: I want to know if there was another

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one from that listening post. We have evidence to

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develop they used that as a listening post.

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THE COURT: Go ahead.

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Q Were there any other illegal taps where the

Atkins Glass store was a listening post at that time?

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A No.

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Who monitored those calls?

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A Detective Aguiluz in the beginning. Later on

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Detectives Riviera and Martinez and Detective Nuveou.

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In between the monitoring of these illegal taps, did you also conduct surveillance with certain persons

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as suspects?

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A We conducted surviellance of the Chile-Lindo

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and all persons who entered or left the Chile-Lindo.

Q Did you see Enrique Hernandez enter or leave

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the Chile-Lindo at any time?

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No.

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Q Did you keep any notes on the illegal wire tap?

A 20

1	Sottile-direct 9
2	A No. There may have been notes at that time,
3	but we didn't keep them.
4	Q Were these illegal wire taps recorded?
5	A No.
6	Q They were
7	A Not on paper. They were recorded on tapes,
8	yes.
9	Q That's what I mean.
10	A Yes.
11	
10	Q Do you know where those tapes are presently?
12	A No, we destroyed them.
13	Q When were they destroyed?
14	A It's hard to say. The procedure was to destroy
15	them shortly after we we didn't keep them around very
16	long. We re-used them.
17	Q Did you conduct or hear any voice of Mario
18	Sepulveda on those tapes?
19	A Yes. I have to state I don't speak Spanish.
20	Q Was Detective Martinez your Spanish-speaking
21	officer at that time?
22	A No, at this time it was Detective Aguiluz and
23	Detective Nuveou, only those two detectives.
24	Q They both speak Spanish; is that correct?
25	A Up until the arrest of Olate.
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Hernandez?

Only to the extent, the wire tap provided

information on a certain room number in the Century Paramount

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Hotel; information that that person who later was determined to be Gilberto Pasquale was involved in narcotics trafficking. At that time I didn't even know that it would be with Olate and Quintantilla. The following of Olate and Quintantilla was the day prior to their arrest.

Q You overheard -- Did you overhear them

Q You overheard -- Did you overhear them making arrangements to meet on the illegal wire tap?

A No.

Q What did you overhear in the illegal wire tap concerning them?

A Nothing, concerning Olate and Quintanilla, nothing.

Q Did you ever get any leads out of Chile-Lindo concerning drug trafficking?

A Yes.

Q What leads did you get --

MR. CLAYMAN: Objection.

THE COURT: I'll allow a little fishing around.

Go ahead. You may answer it.

A Well, the leads were after the Olate and Quintanilla arrest. Do you want --

THE COURT: No, just from the wire tap.

A The lead, you know, we got was just general talk about drug traffic. We suspected drug traffic of the

people who frequented there. There was no lead that brought us someplace where we, you know, made a seizure or got onto anyone else up until that time.

of people from the illegal wire tap?

A Yes.

What names, whose names did you get?
MR. CLAYMAN: Objection, again, your Honor.

THE COURT: What names are related to this case?

MR. STONE: I gave five of them.

THE COURT: Any others?

MR. STONE: I don't know the other defendants.

THE COURT: Give him the names. It was a rather full discussion and hearing on the source of the wire tap. Was the source the Chile-Lindo material?

MR. CLAYMAN: The Government's brief would point out sections in the record where the Court itself, after allowing defense attorneys to cross-examine Detective Brodeur, there was an allegation by one of the attorneys that the informant was fictitious. They went into -- cross-examined Brodeur to a great extent and then the Court stated that at this time pursuant to Rule 510, Subdivision

C, paragraph 3 -- on page 72 of the transcript of
the revised draft of the proposed rules of evidence:
"I'll see both of these witnesses." being Brodeur,
the affiant of the wire testimony as to the informant.
"I'll see both these witnesses in chambers without
the presence of either counsel. I'll examine them
myself. Have them come in now one at a time. We'll
take a fifteen-minute recess."

The Court comes out. "Gentlemen, these records will be sealed. The records of the in camera investigation will be sealed. Is there anything further?"

The Court found there was sufficient basis, based on the examination of the detectives and the sealed record the Court took as to the legitimacy of the informant. There was never any statement, any examinaton that any leads from the Chile-Lindo are from investigation which Detective Sottile -- not part of the team that worked on their case.

THE COURT: I don't remember what was in the record. Do you want me to look at it?

MR. STONE: I don't remember either.

MR. CLAYMAN: It was sealed. You wouldn't remember.

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THE COURT: I saw it. I just don't have any clear recollection.

MR. CLAYMAN: I would ask if the Court deems it necessary to --

THE COURT: We'll have to get the sealed record in this case.

Q Mr. Sottile, I show you the indictment, 71-CR-874, and ask you if you will read that, including the list of co-conspirators, and ask you if any of those names are familiar or divulged to you pursuant to the illegal wire tap.

A None of them, absolutely none of them, were divulged.

Q Did you ever hear of these names on the illegal wire tap?

A None of them.

Q Celestino Valverde?

A No.

Q Did you eventually arrest Mr. Quintanilla and Mr. Romero?

A Yes.

Q Was there a seizure of narcotics as a result of their arrest?

A Yes.

Q Was there a hearing to suppress on that

MR. CLAYMAN: Objection, your Honor.

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wire tap?

1 Sottile-direct 2 THE COURT: I'll allow it. If you can recall. 3 Lieutenant Egan. I mentioned Daly. In addi-4 tion to the others I have already mentioned? 5 Yes. 6 I think it's just Lieutenants Egan and Daly, 7 Detective Daly. 8 Was Lieutenant Egan at that time your superior 9 officer? 10 MR. CLAYMAN: Objection. The Government does 11 want to prevent a fishing expedition. 12 MR. STONE: Limited and pointing. 13 THE COURT: A limited fishing can't be 14 avoided. I'm going to permit it. 15 Yes. A 16 Do you know or did you know in October and 17 November of 1970 Police Officer Owen Brodeur? 18 At that time I believe I knew his name but 19 I didn't know him. 20 Did you know Officer Cruet? Q 21 I never really met them until, you know, came d 22 down here to give testimony on this case.

I don't know. He was the commanding officer in late 1970. He was the only commanding officer, so he

Was Lieutenant Egan also their superior officer?

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would also have to be their commanding officer, also.

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24 25 officer of the Special Investigation Unit would be aware of all the wire taps that his office was maintaining? I wasn't privy to what he was aware of and not

I see. Is it fair to say that the commanding

A aware of. He was aware of my wire tap and never had any discussions with him about what, you know, he would know about other teams and what they were doing.

> Detective Rogers? Q

I don't think I knew Rogers at all. Even by A name.

> Did you know a Huey Pineda? 0

No. A

Did you ever hear his name over the telephone? Q

No.

Did you let Lieutenant Egan listen to any of these tapes?

No. Let me clarity that. I don't recall him A but once ever going into that actual premise. We met him in the area. He only once went in there that I recall.

Is it fair to state then that all the taps 0 on that phone were probably in Spanish or all the conversations?

> Yes. A

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Who would be -- When you say Aguiluz, Nuveou and ---

Up until the time of the arrest, Olate, A Martinez was not there, had nothing to do with this thing. It was only myself, Aguiluz, and Nuveou. A luz did most of the interpreting. Nuveou did less of it cause he didn't have as intimate knowledge of Spanish as Aguiluz did.

So the names I mentioned to you, you might not even have remembered if they were in Spanish; is that correct?

I didn't listen to the tapes. There was no A point. I wouldn't know what they were talking about. I wouldn't recognize the name on the tape.

Did you ever follow anybody after listening Q to a conversation in the Chile-Lindo?

> Yes. A

Who did you follow?

Many of the people who were there. I don't know them all by name.

You would hear a conversation. You would then follow someone if you thought it was drug related until you could see what they were doing; is that correct? MR. CLAYMAN: Objection.

THE COURT: I'll allow it.

Sottile-direct

A Yes. This happened at times, yes.

Q It happened from June until October of 1970?

MR. CLAYMAN: Objection. That wasn't the testimony.

Q What were the dates?

A The first week in September until sometime in November, with interruptions of inactivity in between.

THE COURT: I have now delivered to me the transcript, sealed, 71-CR-874, by my order on 12/3/1971.

Any objection to my unsealing it?

MR. CLAYMAN: No.

MR. STONE: No.

THE COURT: I have re-examined these sealed minutes. I don't see that there's any reason to keep them sealed any more. The case has long since been over.

MR. CLAYMAN: Except, your Honor. If there are any names mentioned.

THE COURT: No names mentioned. It does indicate that it didn't come from the wire tap.

Mark the sealed record as Court Exhibit 1.

I have an original and two copies. I'll give you each a copy.

(Documents handed to counsel.)

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THE COURT: And the original is marked as a Court exhibit at this hearing.

THE CLERK: So marked, as Court Exhibit 1.

(So marked)

THE COURT: We don't need the envelope any longer in which it was sealed. No objection having been indicated --

MR. STONE: No, your Honor.

MR. CLAYMAN: No.

THE COURT: Where are you now?

THE WITNESS: Unemployed.

MAIPO over the illegal wire tap?

A No.

Q You're sure of that?

A Yes.

Q Did you ever hear any reference to any ship over the illegal wire tap?

A There were many seamen who frequented the ChileLindo and I know of conversations that were related to me
wherein seamen would talk about ships, although it was
common for them, you know, to talk about it. Many of the
frequenters were Chilean seamen.

Q Did you hear any conversations about any of

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the -- were these Chilean seamen, where they were talking about swimming and getting something from the boats, the ships?

- A I don't recall any conversation.
- Q On the fourth day of September of 1970, did
 Romero, Quintanilla, Borrone-Iglar, Mario Sepulveda, and
 Celestino Valverde or any combination of those names have a
 conversation that you overheard on the illegal wire tap?
 - A No.
 - Q You're sure of that?
- A As I said, I didn't listen to the wire taps because I didn't know. There was Spanish, but there was no conversations about any of these people. It was only by the photographs I had taken that I learned their names, years later.
- Q Did anyone -- Did you ever hear anybody mention any particular quantity of cocaine or narcotics over the illegal wiretap?
 - A At one time in late November there was.
- Q Approximately what day in late November, do you know?
 - A No. It was with another case.
- Q Do you know the names of people connected with the other case?

1		Sottile-direct 23
2		MR. CLAYMAN: Objection.
3		THE COURT: I'll allow it.
4		If you remember.
5	A	Larida Castilla and Raol Alacalde. 10 0000 0000
6	42 - 42 + Q	You testified at the trial in this matter,
7	did you not,	that you took certain photographs?
8	A	Yes.
9	Q	Did you ever take a photograph of the Chile-
10	Lindo of Mari	o Sepulveda?
11	A	Yes.
12	٥	Did you ever take a photograph of the Chile-
13	Lino of Hugo	Pineda?
14	A	I'm not sure.
15	Q	Did you ever take a photograph of the Chile-
16	Lindo of Made	laine Pineda?
17	. А	Just offhand, I don't recall those two names,
18	no.	
19	Q	How about Amada Ramirez?
20	A	I would have to refresh my memory. I took
21	photographs o	of a lot of people at the Chile-Lindo who were
22	later identif	ied by Mario Sepulveda and others, you know.
23	at the time I	didn't know who these people were.

Q I see. When you took these photographs, did you take these photographs after you had listened to the

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No, it was during. It was from two separate

I'm saying you had an illegal wiretap and you overheard conversations; is that correct?

> Yes. A

conversations on the illegal wiretap?

After you overheard the wire taps and the conversations, you became suspicious of certain activities taking place in the Chile-Lindo; is that correct?

MR. CLAYMAN: Objection, your Honor.

THE COURT: Overruled.

Yes. A

And then you took the photographs; is that correct?

No.

When did you take the photographs in relation-Q ship to the listening of the conversation?

That's difficult for me to recall because I took all the photographs and I took them from across the street from the Chile-Lindo. It's quite possible at that time that we didn't even have the illegal wiretap in yet. Because the photographs were just a general intelligence type of information so that we could have other people look at them and try to determine who, you know, if anyone

would be involved and I'm not quite sure that we had the wiretap in yet when we were taking photographs. The reason I say that is because I recall Aquiluz being up with me and Nuveou and Daily being up with me from the observation post where we took photographs. I can't really say if we had the wiretap in at that time. The first thing we did when he got there was set up photographic observation.

Q On the photographs that were offered in evidence in this case, did they have dates on the back of them?

A No.

Q Would you testify as to the date you took the photographs in court?

A On some -- I believe I did on some of them, yes.

MR. STONE: I ask the Government if they can

furnish me with the trial transcript to refresh

the witness's recollection.

MR. CLAYMAN: Is it necessary?

THE COURT: If you have it.

MR. CLAYMAN: I have some of it.

THE COURT: Your testimony was fairly extensive, wasn't it?

MR. CLAYMAN: No, your Honor.

THE COURT: Short.

MR. CLAYMAN: Not extensive at all.

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THE COURT: See if you can find it.

MR. STONE: I'll continue if you'll let me come back to it.

MR. CLAYMAN: I have it.

(Handed to Mr. Stone by Mr. Clayman.)

O Officer Sottile, I show you your testimony, page 942 until 948 and ask you to read it over, if you would (handing to witness) and see if that would refresh your recollection.

(Pause)

Q Does that refresh your recollection as to approximately what dates you took these photographs?

A Yes.

Q When?

A Between the 2nd and the 9th of September 1974.

Q 1974?

A I'm sorry, 1970.

O During that early period of time, September, was the illegal wiretap already installed?

A It was definitely installed prior to the arrest of Olate and Quintanilla.

Q How long before?

A A matter of days. I couldn't tell you exactly what date it was installed.

A Yes.

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And you testified about that in this trial; Q

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is that correct?

A Yes.

Prior to the arrest of Olate-Romero, had you previously taken pictures of them?

Yes, but I hadn't had them developed yet, but I had known -- one of them shows up in the picture, Quintanilla.

I call your attention to page 953-954 concerning the arrest and the photographs and ask you if that will refresh your recollection as to how you testified in the first trial (handing to witness). Isn't it bottom of 953, sir?

(Pause)

Does that refresh your recollection as to Q whether or not you had photographs with you at the time that you made the arrest of Olate and Quintanilla?

What I said here is true and what I have just told you is true.

Did you have photographs of Olate and Quintanilla at the time you made their arrest?

I don't believe I physically had photographs on me at the time I made the arrest. I don't think I had had them processed, but, as I said here, I had taken their photographs and I immediately recognized them, because I had

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followed them before.

Did you follow them because you overheard a conversation in this illegal tap?

I don't recall.

How many reels would you estimate were Q obtained from this illegal tap?

MR. CLAYMAN: Objection, your Honor.

THE COURT: Sustained.

Do you know where Detective Riviera is now?

No, sir.

Detective Martinez?

No, sir.

Is it fair to say you haven't kept in contact with any of the detectives you worked with then?

That's true.

MR. STONE: Might I have a few minutes, your Honor.

THE COURT: Yes.

(Pause)

THE COURT: Anything further?

MR. STONE: I'm asking Mr. Hernandez if there is anything else he can think of. I'm not planning to ask any unless he has a particular suggestion.

THE COURT: Any cross-examination?

MR. CLAYMAN: Just one or two questions.

THE COURT: Go ahead.

CROSS EXAMINATION

BY MR. CLAYMAN:

Q Detective Sottile, during the time that you were working on the investigation of the Chile-Lindo restaurant, were you aware of what investion Detectives
Tucket or Cruet or Brodeur were working on?

A No.

Q Did you talk with them at this time?

A No, I never had any conversations.

When was the first time to your knowledge -When was the first time it was brought to your attention
that the seizure, the arrest of Olate and Quintanilla had
any relationship to the investigation that Tucket, Cruet
and Brodeur were conducting?

A When I was called down here to the Eastern District to prepare my material for the case.

O That was well after the arrest in this case; is that correct?

A Yes, immediately prior to this case.

Q Did you know that they were conducting wiretaps of Madelaine Pineda or Enrique Hernandez or Mr. Miller?

Sottile-cross

A No.

Q At the time you were working at SIU, how many people were working in the unit?

A Seventy-five.

MR. CLAYMAN: No further questions.

THE COURT: Did you lie at the trial before

me?

THE WITNESS: Your Honor, with respect to the fact that I originally went to the Century Paramount as a result of what an informant told me, I lied. That information actually came from illegal wiretap, but it was very sketchy information. It was just a room number, and from that room number I developed who Gilberto Pasquale was, and I went on to observe him and then he led me to others that I had visually observed and taken photographs of at the Chile-Lindo.

THE COURT: The detective was cross-examined rather thoroughly.

What else do you have?

Thank you very much, sir. That will be all.

(Witness excused)

MR. STONE: I would serially call Detective Aguiluz.

MR. CLAYMAN: Detective Aguiluz is not here.

Detective Sottile testified what occurred over those wires and the relationship, if any, they have. Detective Aguiluz is a detective who is cooperating with the Government in various SIU cases. I fail to see how his presence would aid the hearing.

MR. STONE: Ie would be instrumental. He was the Spanish-speaking officer.

It is our claim there was an illegal tap, we clearly established on direct examination --

THE COURT: Well, is there any of the Spanishspeaking people around?

MR. CLAYMAN: No, your Honor. We have Detective Brodeur, Cruet, and Tucket, who worked with the wire tap, which was litigated at the trial, wiretap that you questioned them about. They're here today to answer any questions that Mr. Stone may have.

THE COURT: Did any of the information that you had result in the wiretap that was used in this case?

MR. SOTTILE: No, I have no knowledge of that team's activities or these people.

THE COURT: I don't understand the connection.

There was an illegal wiretap. There are a lot of illegal activities, but that doesn't give you the right to reopen every case. I don't understand --

MR. STONE: If we can show, and we hope to, that this information was given to Egan and Egan might have supplied some of that information to the other officers --

THE COURT: They're here.

MR. STONE: That's right. I would like to go in order, if I could.

THE COURT: Bring them up.

MR. CLAYMAN: Brodeur, do you want him first?

MR. STONE: I prefer to develop, if we're going to have to adjourn for Aguiluz --

THE COURT: I don't want to. It seems to me too tenuous. We went into this fully at the last trial. I just don't see it.

I gave you full opportunity to try the illegality of the wiretap.

MR. STONE: I'm not criticizing anybody in hindsight, your Honor. I did not try the issue. One attorney represented four defendants, two of which were subjects of wiretap, Enrique Hernandez and Madelaine Pineda. Perhaps in his haste, he neglected to bring forward a requirement for minimization and a requirement for notice.

THE COURT: Well, that may be, but we're certainly not going to retry that issue at this time.

MR. CLAYMAN: We have both Cruet and Tuckett outside if Mr. Stone would like to speak to them.

(Recess)

it brief and get to the point. I have another trial

Let's have a break for a few minutes. Make

THE COURT: I have resealed the material that was unsealed. Counsel is instructed not to reveal its contents to anyone, including the defendant.

THE CLERK: Who is the next witness?

MR. CLAYMAN: Mr. Stone has talked to the

three detectives.

THE COURT: Do you want them for anything?

MR. STONE: No, I don't.

THE COURTH Do you have any further evidence?

MR. STONE: I would like to call the defendant to the stand.

THE COURT: You may.

MR. STONE: On second thought, the defendant has asked me to call Brodeur, and I will at this time.

THE COURT: Very well.

OWEN

BRODEUR, Shield 564, 110th Precinct,
Investigating Unit, called as a witness, being first
duly sworn by the Clerk of the Court, testified as
follows:

THE CLERK: Full name, and spell your last .
name for the record.

THE WITNESS: Owen Brodeur, B-r-o-d-e-u-r.
DIRECT EXAMINATION

BY MR. STONE:

Q Detective Brodeur, did you sign an affidavit on September 25th, 1970 requesting that a telephone tap be placed on the phone of Enrique Hernandez?

A Yes,

Q Did you also sign an affidavit on the 23rd of October, 1970, requesting that a telephone tap be placed on the phone of Madelaine Pineda?

A Yes.

Q Did you personally give those affidavits to the judge?

A Did I personally?

Q Yes.

A Yes.

Q You were present when the judge signed them?

A Yes.

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Q He asked you certain questions; is that right?

A Yes.

Q During the month of September of 1970 did you personally conduct any surveillance directed toward the person or premises occupied by Enrique Hernandez?

A During the month? Yes.

Q What period of time did you devote surveillance towards Mr. Hernandez?

MR. CLAYMAN: I would object to this line of questioning.

THE COURT: What ground?

MR. CLAYMAN: This wiretap is fully litigated, cross-examined extensively on trial. His counsel -- whatever his contention is, somehow or otherwise that it affected this one, he has cross-examined Mr. Sottile. If he wants to ask this detective whether he has or has not, whether the surveillance -- I don't think it's relevant.

THE COURT: Can you get to the main point, please, without --

MR. STONE: After this question.

THE COURT: Answer the question, if you can.

A You asked broadly what surveillance I conducted?

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I was part of a team and the team conducted survillance. Other members conducted part of it. At this late date I can't say exactly what parts I conducted.

That's right.

Would you say you spent at least twenty hours during the month of September actually with a team surveilling Enrique He-nandez?

- Actually, not to my knowledge, I don't believe.
- Did you conduct an investigation where Enrique Hernandez was the target for over two weeks during the month of September?

He was the subject in a large investigation, not specifically just the target.

- How much time did you spend investigating him? I have no idea.
 - Q More than two weeks?
 - A In the whole investigation?
- Q Yes, prior to the time you got the wiretap order.

Prior to the time we got the wiretap order, I couldn't say exactly the time. In the vicinity of two weeks, more or less, I can't say exactly.

Do you rember any person seeing Enrique Herhandez before receiving the wire tap?

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	A 49
	Brodeur-direct 38
7	I'm trying to remember between three wire taps
I think	here were times when he came out of the house.
I know t	ere was a time that my partner saw him and I can't
remember	specific times right now, sir.
0	Did you know Lieutenant Egan on the 23 of
Septembe	, 1970?
A	Yes, I did.
Q	Was he your commanding officer?
A	Yes, he was.
Q	Was he also the commanding officer of then
Sergeant	ottile?
A	Yes.
Q	Did you ever have any conversation with Egan
concerni	your investigation of Enrique Hernandez or James
Miller?	
A A	Yes, I did.
Q	Did he advise you that any of them were seen
at the Ci	le-Lindo restaurant?

No.

Did you ever discuss the Chile-Lindo restaurant Q with Lieutenant Egan?

I think one time we told him Chile-Lindo came up, that I heard the name Chile-Lindo. He said -- I'm not ready to say the exact words but I remember something to

the effect of "Well, that may have something to do with another investigation. You stay on yours and stay away from there."

He said he didn't want the two investigations going together, and that was all.

Did he give you the names of any of the people in the other investigation?

A No, they were all kept strictly secret.

Q . Did you co-ordinate your investigation with Lieutenant Egan?

A We gave him all of our information. He did the coordinating and then the other investigations, we had no knowledge of any other investigations.

Q Did he help you draw up your wiretap affidavits?

A No, sir.

Q Do you know how many wire taps were on the phone of Enrique Hernandez?

A One.

Q Was that in the Bronx?

A Yes.

Q Was there any wire tap on Mr. Enrique Hernandez in Westchester County that you know of?

A No.

Are you aware of any illegal wiretaps conducted

by any agents that you were working with or cooperating with between September and November of 1970?

- A None at all, sir.
- Q You're not aware of any?
- A No, sir.
- Q Did you ever receive any information from Detective Aguiluz?
 - A No.
 - Q ' Do you know him?
 - A Yes.
- Q Did you'ever talk to him between September and November of 1970?

A On payday, a good portion of the men assigned to the office used to come into the office to pick up their checks. I may have talked to him then. I had no private dealings with him or talks with him. I knew him from the office to say hello, that's all.

- Q Did you know Sergeant Sottile?
- A Yes.
- Q Did you talk to him?
- A The same way.
- Q Did you ever discuss your cases with him?
 Did he ever discuss your cases with you?
 - A Only when the case was being prepared here

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in this building.

Q When did you first become aware that Sergeant Sottile conducted an illegal wiretap at the Chile-Lindo restaurant?

A When I heard it from the Assistant U.S. Attorney.

Q That's Mr. Clayman?

A Yes.

You heard that today or a couple of days ago?

A Yesterday or the day before.

Q The only informant that you had was the one you discussed with Judge Weinstein in 1971; is that correct?

A Yes, sir.

Q And you received no information from any other police officer that you didn't tell us about?

A No.

Q Did you ever receive any information from Detective Luci?

A No.

Q You know Detective Luci?

A Yes.

Q Do you know Detective Annun Tate?

A Yes.

Q Did you ever receive any information from

Detective Annunziata?

A I never worked with them.

Q In your wire taps of Enrique Hernandez and

Madelaine Pineda, did you ever overhear them call the ChileLindo restaurant?

A I remember vaguely about the Chile-Lindo coming up. Whether it was incoming call and the name Chile-Lindo restaurant was mentioned, or outgoing call that went to the Chile-Lindo and that's how we learned the name, I'm not sure. I know it came up very briefly. It was mentioned very briefly and we were told to stay away, it might be part of another investigation. They didn't want everybody running over one another.

Q You heard the reels of tapes on Hernandez' phone; is that correct?

A Yes.

Q Were there any incoming calls to Hernandez from the Chile-Lindo?

A I just said, sir, there were incoming calls and outgoing calls, but I don't know now whether or not, which was which. I don't know whether the call mentioning the Chile-Lindo restaurant was incoming or whether it was going out, and we got the location or the name of Chile-Lindo. We had nothing to do with it in our investigation.

be all.

Q How many phone calls did you hear on the Hernandez tap?

MR. CLAYMAN: Objection, your Honor.

THE COURT: We have gone through this.

MR. STONE: A question of what you allow me to go through on minimization, if anything, your Honor.

THE COURT: I will not. Not at this stage.

MR. STONE: Your ruling, it's been waived or gone into before.

THE COURT: It's not before me. There's certainly no basis for a new trial at this stage.

Thank you very much, Detective. That will

(Witness excused)

THE COURT: Any further witness available at this time?

MR. STONE: Mr. Hernandez himself, your Honor.

I have been given the opportunity to discuss this with Mr. Cruet and Mr. Tuckett, and I have no desire to call them.

THE COURT: Very well.

Swear the next witness, please.

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ENRIQUE HERNANDEZ, called as a witness, having been duly sworn by the Clerk of the Court, testified as follows:

THE CLERK: Full name.

THE WITNESS: Enrique Hernandez.

DIRECT EXAMINATION

BY MR. STONE:

Q Mr. Hernandez, could you tell us where you lived in August of 1970?

- A Claflin Avenue in the Bronx.
- Q 2712 Claflin Avenue?
- A Yes.
- Q You remember what your telephone number was?
- A Five four --
- Q Was it 543-7583?
- A Yes.
- Q During the months of early September until the middle of November of 1970 did you have occasion to talk over the telephone with one James Miller?
 - A Yes.
 - Q How many occasions?
 - A Quite a few occasions.
- Q Did you have occasion to talk over the telephone with your brother, Martin Hernandez and Victor Hernandez?

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A Quite a few occasions.

Q Did you have occasion to talk over the telephone with Madelaine Pineda?

A Yes.

Q Did you have occasion to talk over the telephone with Mario Sepulvida?

A Quite a few occasions.

Q Speak broken English and Spanish; is that correct?

A Yes.

Q Did you ever have occasion to use the telephone at the Chile-Lindo bar or restaurant?

A Quite a few times.

Q Could you tell us when you used their phone and who you talked to?

A Well, I mostly in around September, I called Madelaine Pineda quite a few times. I called my brother and I called James Miller.

Q Which brother did you call, or both?

A Both.

On any of the conversations you had with any of these people, was it related to narcotic drugs?

A Yes.

Q Did you know that the Chile-Lindo telephone

was tapped?

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A No.

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Q Did you use your name when you made these phone calls?

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A Yes.

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Q Did you ever receive any telephone calls at the Chile-Lindo Restaurant?

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A Quite a few.

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? From who?

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A From Madelaine Pineda, Mario Sepulveda, and my brother, Martin Hernandez, and my brother Victor Hernandez.

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Q While you were home, did you ever receive calls from any person who informed you they were at the

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Chile-Lindo restaurant?

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A Yes.

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Q Who?

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A Mario Sepulveda, Madelaine Pineda and Victor and Martin Hernandez, my brothers.

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Q Now, on September 17th, 1970, did you know an Augusto Lorez?

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A Not that I recall.

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Q Specifically, on September 1970 did Augusto
Lorez enter your apartment at 2712 Grafton Avenue, the

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Bronx?

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MR. STONE: Your Honor, would you let me go into the fact that the Government claims that the defendant received adequate notice in their answer?

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THE COURT:

MR. STONE: The reason I would like to inquire

is the fact one attorney represented four defendants.

THE COURT: No, too late for that.

MR. STONE: I'm sure you're familiar with the Court of Appeals case, conflict of interest, two defendants, that was before Judge Mishler.

THE COURT: I am, and I granted a new trial on that basis, but not after some years. I'm not going to go into that matter. My opinion the defendant was tried fairly and the evidence was overwhelming.

His conviction was not due to any possible conflict.

MR. STONE: The only reason I bring that out, your Honor, that there was no inquiry either as to notice or demand for minimization.

THE COURT: I understand that.

MR. STONE: That might have been occasioned because the attorney that represented Enrique ha Hernandez in this matter also represented Martin Hernandez in the state court and Martin would not be the defendant that was aggrieved and therefore he didn't consentrate his issues on the aggrieved defendant. It could have been a very slight

oversight but maybe instrumental as to Enrique
Hernandez.

THE COURT: No, it was not due to any conflict.

MR. STONE: No further questions.

THE COURT: Thank you very much. Step down.

THE WITNESS: Might I say something?

I talked to ex-detective Nuveou. He's in Lewisburg now. He told me of the surveillance they did have on Mario Sepulveda and Valverde and all of them, Olate, and he says they were following them nearly every day and they did get them all from the wire taps and he did say that Mr. Cruet and Mr. Brodeur, he says Mr. Cruet and Brodeur, that was their bag in illegal wiretapping.

THE COURT: I'm not going to take that hear-say on hearsay.

Do you have an affidavit?

MR. STONE: I would like to call him, your Honor.

THE COURT: No. Go down to get the affidavit.

I'm certainly not going to bring him up on the basis

of what you heard here.

MR. STONE: The problem there, your Honor,

candidly is that his appeal is still pending in the Second Circuit.

THE COURT: I'm not going to do anything with the case on the basis of what I have. The whole thing is too tenuous. Whatever we have had here, and it's very slight, would be cumulative.

THE DEFENDANT: He even asked me, your Honor, if I did subpoena him, he would only tell the truth and I told him --

THE COURT: I'm not going to bring him up here on the basis of what I have. If you want to go down to get his affidavit -- There are all these rumors floating around in jail. I can't retry cases four years later on the basis of this kind of information.

Anything I heard today would have produced not the slightest difference at the trial.

MR. STONE: Produced the suppression of the narcotics seized --

THE COURT: Nothing that I heard here would have affected my decision, and nothing that I heard here would have affected the jury's decision.

MR. STONE: I'm referring to the narcotics received in the Century Paramount introduced in this trial. Had you known of the illegal wiretap you

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might have felt that that was an illegal lead, and that the narcotics were seized as the fruits of that wiretap. You may not have allowed it into evidence and the jury may not have been swayed on the basis of less narcotics being brought into the case.

THE COURT: What's the Government's view on that?

MR. CLAYMAN: The Government's opinion (1), your Honor, Brown v. the United States, Supreme Court 411, U.S. 221, a copy of which I have, it's argued the defendant Hernandez -- he would have no standing to object to that seizure of narcotics. Moreover, the standard on a new trial, as your Honor said, is whether newly discovered evidence, whether this would in any way have affected the jury's verdict.

As your Honor said, this was just part of some of the narcotics brought in, although a small part. It didn't bear directly on Enrique Hernandez. The Government feels that the information that we have had today, no way would have changed the verdict, the fact that the defendant Enrique Hernandez would not have standing to challenge.

MR. STONE: A motion by Mr. Lanna on page 1163 concerning Detective Sottile's testimony, we think it was late for him to make the motion. Had he

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known of illegal wiretaps, he might have made the motion, tried the case differently. Your rulings may have been different as far as a severance. It's hard to tell what rulings would have been made.

THE COURT: That's why they require a very heavy burden before a new trial can be granted. We can't retry these things over and over again.

The defendant, I thought, had a very fair trial. He was convicted out of his own mouth; his wiretaps were very convincing; and the wiretap that we had in the case and that was introduced was legally obtained. There is no indication to the contrary.

MR. STONE: I think your Honor, to further and completely develop the Chile-Lindo wire tap and any leads, you would almost have to have Aguiluz as a witness. He's the only one that spoke Spanish that was aware of the situation. I would be willing to continue it at any time --

THE CCURT: I simply am not going to call in a whole series of witnesses on the basis of what you have shown here. It's just too tenuous.

MR. STONE: The only one that should be called in is Aguiluz.

THE COURT: I'm not going to do it.

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MR. STONE: Strictly under the Government's control.

THE COURT: I'm not doing it.

There is information now abroad that a number of people involved in narcotics control were crooks.

That is not the basis for setting aside every one of these verdicts and going into background on each of them. There's no indication here of any connection.

of Mr. Hernandez's conviction on the basis of the evidence we had.

Thank you very much. Motion denied.

MR. STONE: The Government has ordered the minutes. Would you approve?

THE COURT: Is the defendant without funds?
All right.

MR. CLAYMAN: We received an affidavit, notice from the Court of Appeals that the defendant had made an application for treatment in forma pauperis, appointment of counsel. That was denied by the Court of Appeals on September 11, 1974.

I believe the Court of Appeals --

THE COURT: I have the defendant here.

Are you without funds now?

A 65

THE DEFENDANT: Yes.

THE COURT: You have no money at all?

THE DEFENDANT: None, your Honor.

MR. STONE. The defendant's motion to the Court of Appeals, which I was informed about from the defendant today and by the Government last week, was for a minimization hearing. I think you denied his motion in 1972 and then he appealed from that and about a year later the Government denied him leave to proceed in forma pauperis.

MR. CLAYMAN: This occurred on September 11th 1974, your Honor.

MR. STONE: That was when the Government -THE COURT: It doesn't make any difference
what the Court of Appeals did. They didn't have

his testimony before me. It's before me now.

I believe him when he says he's without funds. Thank you, gentlemen.

AFTERNOON SESSION (2:45 o'clock p.m.)

THE COURT: Let's continue. Shall we?

MR. SCHLAM: Yes, your Honor.

Your Honor, the next Government witness is Detective James Sottile.

DETECTIVE JAMES SOTTILE,

called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

THE CLERK: Will you state your name.

THE WITNESS: James Sottile, Shield No. 747,
Special Investigations Unit, New York City Police
Department.

DIRECT EXAMINATION

BY MR. SCHLAM:

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Q Detective Sottile, how long have you been associated with the New York City Police Department?

A Almost nine years.

Q For how long a period of time have you been with the Special Investigations Unit of the Narcotics Division?

A I have been in the Narcotics Division four and a half years and in the Special Investigations Unit about two and a half years.

Q Detective Sottile, calling your attention to

Se	eptemb	per 10, 1970 at approximately 11:00 p.m. were you
wo	orking	on that date at that time?
A		Yes, sir.
		Q And where were you working?
A		At that time I was in the vicinity of 48th Street and
E.	ighth	Avenue?
	Q	New York County?
A		Yes.
		Q Approximately at that time did you have a
C	onvex	sation with anyone?
A		Yes, sir.
		Q And was that conversation with a confidential
i	nform	ant?
A		Yes, sir.
		Q Now, did you know that particular confidential
i	nform	ant?
A	1	Yes, I did.
		Q And had that informant given you information
I	rior	to this same date?
P	A	Yes, he had.
		Q And had this informant given other members of
1	the Ne	w York City Police Department information prior to tha
(date?	
1	A	Yes, sir.

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Q And do you know as of September 10, 1970 how many arrests had been made by the New York City Police Department as a result of his information? A At least five separate occasions that I can recall now. At least five.

- Q Do you know as of September 10, 1970 how many convictions had been obtained as a result of his information?
- A It is four that I know of now.
- . Q Well, do you know how many convictions had been obtained as of that time?
- As of that time there were at least four convictions, as of that time.
- Q Detective Sottile, as best you can recall will you please tell us what conversation you had, the substance of the conversation was, between yourself and this confidential informant?
- A He told me that there was a man, a Cuban, he described him.
 - Q As what?
- A As a male Cuban about 5'4" weighing approximately 130 lbs., a round-faced, dark-haired man who had long sideburns.

He described him as living in Room 1717 of the Century Paramount Hotel at 235 West 46th Street.

Sottile-direct

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In Manhattan?

New York County, yes, sir. A

He told me that that man is involved in narcotics. said that man was seen by him to have large quantities of money and --

- Now, is that the substance of the conversation?
- That was the basic substance of the conversation. A
- Now, did you do anything as a result of this conversation?
- Yes, sir.
 - Will you tell us please what you did?
- I went to the Century Paramount Hotel.
 - When?
- Right after speaking to the informant. A
 - Continue, please.
- I went to the Century Paramount Hotel and I had a conversation with a Mr. Jerry Barc who is the Manager of that hotel, and I inquired about the man in Room 1717. And he told me his name was Gilberto Pascual. And he described him to me.

And I informed the Manager that I would be in and around the hotel.

Shortly thereafter I observed a man fitting that description in the bar at that hotel.

This man aroused by interest because he left a drink at the bar without touching it and he kept going back and forth to the street looking up and down the block generally in the direction of Eighth Avenue where the traffic would come from, where the vehicular traffic would come from. He did this several times. And again he left another drink at the bar without touching it on the second occasion.

There came a time when I got the Manager of the hotel and pointed out this man to him. And he identified the man as Glberto Pascual, the man from Room 1717. And he further offered me information. He said that this man when he pays his bills usually has a large sum of money in his pocket, \$100 bills, and that the man apparently has no visible means of support.

However, the Manager knew his wife to be involved in show business. And the man in some shape or form told the Manager that he was involved in show business. But the Manager just felt from seeing him all the time that he was not. And he related this to me.

I kept observing the man, this Gilberto Pascual. And
Iwas in and out of the bar in the hotel. But there came a
time when I was in front of the hotel and Pascual came out
of the bar and I engaged him in conversation about the RollsRoyce that was parked in front and other conversation relating

to the fact that there were uniformed policemen, many in the area of the hotel on call concerning the possibility of quarantining the hotel because someone who came in on an international flight had come down with a possible communicable disease.

I engaged Pascual in conversation out there about these things. And I observed that he kept looking in the direction of Eighth Avenue looking at the vehicular traffic coming into the block as if he was waiting for a car.

At least one time he went to the corner of Eighth Avenue, looked down at the traffic and walked back.

And then there came a time when a car pulled up -excuse me -- I am a little ahead of myself. The police,
after I finished talking with Pascual, were leaving. They
decided not to quarantine the hotel and they all left.
And the radio cars pulled away.

Then Pascual went to the corner and came back and then a car pulled up. It was a '69 Ford sedan maroon four-door.

And I immediately recognized the car as a car that I had seen on previous occasions, a car which, in fact, I had followed on previous occasions. I recognized the driver of that vehicle and the passenger who was in the right-front seat. The driver was a male later known to me as Justo Quintamilla.

And the passenger was later known to me as Nicolemus Olate.

I knew him as Nicolemus.

Gilberto Pascual got into the back of the car and the car pulled away.

I got into another car with another officer and followed.

I observed that they went to the corner which was the corner of Broadway and 45th Street -- correction --46th Street. They went south on Broadway. And then they turned into 45th Street going west.

I was observing during this time that Pascual was hunched over the seat, hunched over the front seat while he was sitting in the back in conversation with the occupants.

I noticed that he kept turning around and looking around. The car drove unusually slow. Very slow.

As I said, they were proceeding west on 45th Street.
When they got to Eighth Avenue they made a right going
uptown on Eighth Avenue, and another right on 46th Street.

I was forced to pass them on Eighth Avenue because they were going very slow. And I went directly back to the hotel and waited for them.

I was able to park my car -- I was not driving it -I was able to leave the car and stand in a position in front
of the hotel under the marquis when they pulled up.

Now, that had been the same place that Pascual had left.

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me and the same place where he had conversations with me.

When they pulled up they stopped a minute in front of the hotel. They were in conversation. On the front seat of the automobile which was next to me I observed a large package. And this package was in a ripped condition, this package. By that I mean it was what shall we call it, an envelope, or fiber material envelope, and the corner of the envelope, of the flap, was ripped off or missing from the envelope. And protruding from this hole in the envelope was a plastic bag containing a white substance.

This was on the seat between Olate and Quintamilla.

They had a short conversation. And Olate handed this package to Pascual.

Pascual got out of the automobile. And we approached Pascual to place him under arrest. And he ran with the package. We quickly apprehended him.

Olate and Quintamilla took off in the car again going to ard Broadway and 46th Street.

Pascual immediately blurted out when we apprehended him, "I found it by the curb."

And once he was under control I went alone and I ran on foot to Broadway and I commandeered a vehicle.

Olate and Quintamilla went south on Broadway. That would be the Seventh Avenue side of Broadway where 42nd Street

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goes into Seventh Avenue. And I commandeered a vehicle --

Q What type of vehicle?

A It was a van-type vehicle, a commercial van like a Ford Econoline type. I don't know whether it was a Ford, however; it was that type of van. And it had a lone male Negro driver. At this time of night there wasn't very much traffic.

Ω Approximately what time was this?

A It was about 12:30 A.M. on September 11, 1970.

And at 34th Street and Seventh Avenue I had the operator of the van pull in front of Olate and Quintamilla's car. And I jumped out and placed them under arrest. I got into their car with them and made them drive back to the hotel.

Now, Officer, you stated that you saw from the package a white substance; is that correct?

A Yes, sir.

(continued next page)

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Now, in your experience as a narcotics officer have you seen a substance that looked like that before?

A Yes, sir, many times.

Q And in your opinion at that time was that substance narcotics?

A Yes, sir.

MR. SCHLAM: I have no further questions, your Honor.

THE COURT: Does anybody want to ask any questions?

(Discussion between various defense counsel thereupon ensued.)

MR. POVERSTEIN: Your Honor, for a point of clarification, and meanwhile we can discuss the matter, but at this point do we have standing or is this particular hearing right now proceeding on the basis as to whether or not we do have standing?

THE COURT: Well, I will assume that you have standing for the purpose of the hearing.

MR. SCHLAM: Will you mark this, please?

THE CLERK: Notebook marked as Government's Hearing Exhibit H-10 for identification.

THE COURT: Are these the notes of the

officer?

MR. SCHLAM: Yes, your Honor.

(Document referred to being the notebook of Officer Scottile was thereupon marked as Government's Hearing Exhibit H-10 for identification.)

THE CLERK: Document marked Government's Hearing Exhibit H-10A.

(Document referred to was received and marked Government's Hearing Exhibit H-10A for identification.)

MR. SCHLAM: This rubber band takes it up to the time in question.

THE COURT: Is this man mentioned in the indictment?

MR. SCHLAM: Not the man that was arrested.

THE COURT: Just Quintamilla and Olate.

MR. SCHLAM: Yes.

MR. BLACKSTONE: Your Honor, we have just a few questions.

CROSS-EXAMINATION

BY MR. BLACKSTONE:

Q I am sorry, Officer, but I forgot your name.

A Scottile.

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Yes.

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Q Detective Sottile?

Q Detective, did you say it was evening at the time on that date that you made these observations at the time the car returned to the hotel?

A This was at 12:30 A.M. on September 11th.

Q And a vehicle pulled up in which there were three individuals, Olate, Pascual, and also a third, Quintamilla?

A Quintamilla and Olate were the only two in the automobile when they pulled up first.

Pascual got into the automobile.

And at what time, at what juncture -- was Pascual in the automobile at the time that you say you saw -- looked into the automobile and saw a package?

A Yes, sir.

Q In the vehicle, were the lights on or off in the vehicle?

I don't know.

Q Well, you say that you looked in and saw something and it was night; is that correct?

It was nighttime.

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Q And you were able to observe what was inside a vehicle during the night; is that correct? Is that correct?

That's right. I was under the hotel marguis.

Q And that was lit?

A Well lit.

Q But the vehicle itself, the package was inside the vehicle; was it not?

A Yes, sir.

Q And you don't recall whether there was a light lighting up that vehicle or not, inside the vehicle?

A I wasn't in a position to see the dome light of the vehicle because I was looking down into the vehicle. I was standing on the curb.

Q Well, how far away from you -- from the vehicle were you?

A I was about two feet from the vehicle.

Q And was the package in the front seat?

A Yes, sir.

Q And how many other people -- how many occupants in the front seat?

A Two.

Q And was the package in the middle between the two individuals on the driver's side and the passenger's side?

A It was between the driver and the front-seat passenger.

Q	So	then y	you wer	e able	to look	through	the	
vehicle,	through	the fi	irst pa	ssenge	r you	were lo	oking	in
through t	the passe	enger s	side; i	s that	correct	?		

A That's correct.

I'm sorry, I was looking through the driver's side of the vehicle.

Q And you had -- and I presume there was a 'steering wheel?

A Yes.

And you looked through the driver and through the steering wheel into the area between the passenger and the driver?

A No.

Q No?

A How could I look through someone?

Q That's right, how could you? How could you see it?

A I looked in front of him.

Q I thought you said it was in the seat.

A That's what I said.

Q And it was between the driver and the passenger -- correct?

A That --

Q That's what you said?

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Q And the driver was sitting there in the driver's seat; is that correct?

Exactly. A

Q And you were looking through the driver's side?

That's correct. A

That's correct.

Q And the package was in the seat, the front seat?

Yes. A

> Q Between the passenger and the driver?

A Yes.

Q So now suppose you explain how you were able to see it?

A All I had to do was just turn and look. And I had a clear view of a package in the front seat of that automobile while I was standing next to it. I moved around a little bit, I could still see the package looking through the top of the windshield.

Q Well, were they holding the package up like that (indicating)?

A No, it was right in the seat.

Q It was on the seat. And not only were you -how big was the package; was it a small package?

A No, it was approximately 18 x 12 or 14, approximately three inches thick.

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Q So it was sort of a long, narrow package -- right?

A It was about the size of that briefcase on the table there, that black one.

Q And you say that it was about the size of Mr. Panzer's briefcase?

A About that size. Perhaps a little smaller.

Now I really want to understand this, Officer.
You said that you were looking into a vehicle and through
the driver's side, so we will assume that this is the driver's
side and I'm the driver looking ahead.

A Right.

Q And you said that the package was between the driver and the passenger, and you were able to look in and see the package?

A That's right.

Q Okay. And not only were you able to see the package but you were also able to observe that it was ripped?

A That's a fact.

Q And where was it ripped?

A It was ripped in the -- the corner of the envelope.

The envelope had a flap, the corner of the envelope was ripped. The flap part and part of the envelope itself was ripped.

Q Well, the envelope has this -- there are four corners, aren't there?

A That's right.

Q Now, the package was situated against the seat; is that correct, the actual seat?

A Well, it was laying on the front seat.

Q Flat?

A Flat.

Q Then you observed the top side of it as being ripped; is that correct?

A Yes, sir.

And you say that you were not only able to look in between all this, the steering wheel and the individual who was directly in front of you as you were looking in, but you were also able to observe some white powder at some point? Where was that white powder?

A It was contained in a plastic bag which was clearly visible pretruding from a part of that package.

Q You don't remember whether the lights inside the car were on or off?

A You see the -- I would assume -- I don't remember seeing any light bulbs. I remember seeing a well-lit car while I was under the marquis. The marquis of that hotel extends to the sidewalk line, and this is where the car

pulled up, and it was parked. And this is where I was standing, under the floodlights of the marquis, which were coming down from overhead and shining through I would assume the front window of the automobile.

If the dome light or any other lights were on inside the car I don't know. I didn't see those lights.

Q How did the individual who got out first,'
Pascual -- withdrawn.

He was not in the car but he received that package, you say?

A Pascual was in the car.

Oh, he got into the car? Then did you see anything transferred in that car?

A I stated that at the time they pulled up to the hotel after driving around the block, Olate, who was in the right-front seat, picked up that package and gave it to Pascual, who was hunched over the back seat.

You testified that -- how much or how many seconds would you say you had an opportunity to observe what you believed to be white powder? About two seconds?

A Now, I had more than one view at it because I -- I moved, you see. And I -- I'd say the whole thing where I had the package off -- on and off observation was less than

a minute. I don't know exactly what it was.

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And you say that based on that observation, in your opinion, just looking at that, what you saw -- Was it something that you saw that was white, or did you actually see texture, you know, granules?

A I saw a white substance which --

Q That could mean that you saw white paper, couldn't it?

A Which appeared to be a -- a powder in a plastic bag.

That's what it appeared to be to me. Coupled with what the informant had told me --

Q No, that's not what I'm asking you.

A Well, I thought you started to ask me how I knew it was --

Q No, I was asking you --

A Sorry.

Q Now, on the basis of your observation alone can you as an officer with experience, as you say you have, or have testified that you have in the field of investigating narcotics -- can you identify the difference at five or ten feet, from a distance of five or ten feet, whether a substance is cocaine or whether it is talcum powder or whether it is any other kind of powder? Can you form an opinion based on that?

A Let me ask you if I understand the question: You are

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asking me if at a distance of five	to ten feet I can tell
you whether a powder is cocaine or	some other type of
substance not a narcotic?	

Q Yes.

A Is that correct? I couldn't definitely say that, no.

MR. BLACKSTONE: No further questions.

MR. MARCUS: A couple of questions, your

Honor.

CROSS-EXAMINATION

BY MR. MARCUS:

- Q What color did you say this package was --
- 13 | A The --
 - Q (Continuing) -- the unripped portion?
 - A ____ That was like a -- a reddish color. As a matter of fact that's the -- the type of package it is. (indicating)
 - As a matter of fact, that's exactly --
 - Q That size?
 - A That's exactly what it is, that's right.

MR. MARCUS: Mr. Duggan, may we make use

of one of those packages instead of this?

MR. POVERSTEIN: May we use the original

package?

from my room and we will mark it. Don't take one

of those.

MR. POVERSTEIN: Counselor --

THE COURT: Mark it as a defendant's exhibit when it comes in.

MR. MARCUS: Your Honor, perhaps the
U.S. Attorney is going to be prepared to introduce this original package into evidence. If he
has got it here maybe we can use that.

MR. SCHLAM: Your Honor, I don't have it here.

THE COURT: Do you have any other questions besides the ones on the envelope?

MR. MARCUS: Yes, I might as well ask a few others while we are waiting for the package.

Q You said you moved around, Officer, is that correct?

A Yes.

Now, at the first time when this car pulled up you were two feet away from the driver, you say, in other words, two feet to the driver's left; is that what your testimony was?

A I don't know where I was exactly at the moment he pulled up, but shortly thereafter I was in -- in approximately that position.

Q Well, do you recall whether there was any time lapse before you got into that position, from the time he pulled up?

A I don't recall.

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	Q		Yo	ou were	in	a	posi	tion	then	just	directly	to
the	left	of	the	driver	; i.s	5 .	that	corre	ect?			

- That's correct. A
 - Q And then you say you moved around?
- A Yes, sir.
 - Q And where did you move to?
- I just shifted my weight a little bit, a few feet, just to -- I was just hanging around.
 - Q Well, how many feet?
- Just two --A
 - Q (Continuing) -- in this shifting did you move?
- A Exactly I don't know.
- Q Could you approximate? Did you move around the front of the car? Did you move to the back?
- A No, I moved -- I moved just a couple of feet.
- Q Well, were you still looking in the same window when you moved?
- A At times, I looked in that window.
- Q Did you look in any other windows of the car, or just that one side window?
- A I looked -- I looked through the front window and through the driver's window.
- Q In other words, you looked through the . windshield as well?

1	Sottile-cross 222
2	A As well, yes, sir.
3	Q How far were you from the car when you looked
4	in the windshield, how far was your body or your feet from
5	the side of the car when you looked in the windshield?
6	A One or two feet. In that area.
7	Q Did you bend over to look in the windshield at
8	all, did you kind of lean in a little bit?
9	A I don't recall. I didn't want to be too conspicuous.
10	I don't know if I
11	Q Is it possible? Do you recall if you did or
12	you didn't? Can you say?
13	A I don't recall if I bent over or not.
14	Q Is this roughly the size (indicating)?
15	A That's roughly it would be opened a little bit, ye
16	It's not it wasn't flat like that.
17	Q Oh, in other words, it's thicker?
18	A Yes.
19	Q But I'm concerned with the surface at the
20	moment.
21	A Yes, that's the that's
22	Q All right, now, these two gentlemen are seated
22	in the car. This was like so down between them, or like so

A No, it was flat.

(indicating)?

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Down like this -- right?

(Witness nods.) A

Was it forward on the seat or back against the --

The -- the left --A

(Continuing) -- back part of the seat?

The left top front of the envelope, which was the A ripped portion, was facing forward.

Q Now --

Okay? A

(Continuing) -- what I am asking is the seat is wider than this envelope is long; the question is was this all the way back in the seat or was this leaning forward to the front edge of the seat, the envelope when you looked in? The seat is wider than this is.

A Well, you are asking me --

Q I mean was it down close to their hips or up by their knees?

A No, the -- the portion of the envelope that was in my view was the -- was in the forwardmost part of the envelope, from the back --

That would be --

(Continuing) -- of the seat. A

(Continuing) -- this portion -- correct?

Which was the left front top. You are not pointing

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to the left front top of the envelope, though.

Q Well, if this gentleman is the dri

Q Well, if this gentleman is the driver -- by the way, who is the driver?

A Ouintanilla.

Q And if this represents Mr. Olate, this is the left front top, is it not, where my index finger is now pointing?

A You have the back of that envelope, as far as I can see.

. Q Well, perhaps, Officer, do you want to come over here and take a look? I'm just going by what you have told us so far.

A Right.

Q Now, this is the left front, is it not? Is this the corner you mean?

A This is the back of the envelope. This would be the front, in my opinion.

Q I don't know what you mean by --

A This is the front of the envelope (indicating), this is the left top front. This portion here.

Q Wait a minute, now. The envelope was like this, then? Was it longwise like this, or sidewise like this (indicating)?

A No. I could show you --

Q Well --

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1	Softile-cross 225
2	A The envelope was in a position as such (indicating).
3	Q At an angle?
4	A At an angle.
5	Q Now, which portion of the envelope was the
6	portion you were concerned with?
7	A The left front, this flap.
8	Q That's really the right-front corner, isn't it,
9	if you turn it this way, or just this portion out front
10	(indicating)?
11	A This portion here of the envelope as we are talking
	(indicating).
12	Q We will turn it over, we will do it this way.
13	Is that
14	MR. SCHLAM: Your Honor
15	Q Does it make any difference to you at this
16	point now, Officer?
17	A I'm trying to represent it the way it exactly was, and
18	if you do that I would have to turn the envelope like this
19	and show you that the envelope was very much like this one.
20	However, the left front of it was missing and the
21 °	package was protruding from this area (indicating). The
22	envelope is like this (indicating)
23	Q Now
24	A (Continuing) on the seat between the two gentlemen.
	(continuing) - on the seat between the two gentlemen.

Q

Fine. How big an area --

THE COURT: Give him a red pencil and let him mark where he thinks it was torn.

MR. MARCUS: Could we ask him to mark the approximate size of this ripped portion as well, your Honor?

MR. SCHLAM: Your Honor, I believe that

Detective Sottile has a photograph of the package.

Maybe that --

THE COURT: Well, let him mark it. You can do that on redirect. Let him mark it.

Take the red pencil and mark roughly where it was torn.

THE WITNESS: This area of the envelope was missing.

THE COURT: All right.

Q May I see that, please?

I'd like to point out that the -- the envelope was
-- had contents in it and it was open. It wasn't collapsed,
it was -- it had a substance in it which -- which kept it
open.

Q You would say an area of maybe a quarter of the surface of this envelope was open and exposed, exposing the underlying substance?

		Sottile-cross 227
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2		THE COURT: He said that now four times.
3		Q Ware the windows open or closed?
4	A	The left front window was open.
5		Q Was there tinted glass, if you recall, on th
	car?	
6	A	I don't recall.
7		MR. MARCUS: No further questions.
8		THE COURT: Any other defendant?
9		
10		MR. POVERSTEIN: I have a few questions,
11		your Honor.
12	CROSS-	EXAMINATION .
13	BY MR.	POVERSTEIN:
14		Q Detective Sottile, all this occurred on
	Septen	ber 10th of 1970; is that correct?
15	A	The night of the 10th and the morning of the 11th.
16		Q And that was the day you met your informant?
17	A	Yes, sir.
18	A	
19		Q And approximately what time was it when you
20	met yo	ur informant?
21	Λ	At 11 11:00 p.m. on September 10th.
		Q What time did you start work that day?
22	A	I don't recall. It was early in the day. It was
23	T as a	It come to work at night.

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Q When you saw your informant were you alone or

Sottile-cross

2	with	another	brother	officer?	
	A	T was	with an	other brother	officer.

- Q May I have his name, please?
- A Detective Aguiluz.

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- Q And then he told you about a Gilberto Pascual, am I correct, the informant?
- A He told me about a person, and I don't think he named him.
- Room 1717 at the hotel?
- A That's correct.
- Q And was this the first time you had ever heard of this guy?
- A Yes.
- Q And I take it then you shortly thereafter went over to make some personal observations?
- A To make some inquiries and some --
 - Q And possibly make personal observations?
- A Yes, sir.
- And you made some inquiries with the Reservation
 Manager, am I correct?
- A With the General Manager of the hotel.
- And in your observations you noticed that the subject that you were interested in ordered a drink and

Sottile-cross

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didn't drink it, and this happened on two different occasions? That's right.

- Was this any indication to you that he was dealing in drugs at that point?
- That in itself? A
 - Q Yes, that in itself.
- No.
 - Did you see him pay for the drinks? 0
- Well, it was money on the bar but I don't know if the bartender took it or --
- Did you ever see him at any time take out a big roll of bills?
- A I didn't personally, no.
- Is there anything in the way of observations concerning the subject Gilberto Pascual relative to his possibility of dealing in drugs that you haven't told us up to this point, prior to making the arrest?

MR. SCHLAM: I will object to that, your Honor, the form of that question.

THE COURT: Overruled. If he can recall. THE WITNESS: The -- you are asking me if there was anything else other than what was already given in testimony?

That you testified to in regard to Pascual. Q

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They went to the corner, they stopped for a light, Broadway and 46th Street, and I was right behind them when they started.

They went south and they went west on 45th Street, and then they went up Eighth Avenue north and back into the block on 46th Street. And I didn't lose them.

- Q No, but you were right behind them at all times?
- A Not at all times, but I was --
 - Q Mostly, they were in your sight, then?
- A They were in my sight.
- Q They were in your sight? Were you the driver of the vehicle that you were in?
- A No.

(continued next page)

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			Sottile	e-cross			23	32
	Q	Was that the	he same	partner	you v	were	talking	about
that w	as with	you at the	time?					
Α	Yes, s	ir.						
	Q	So that wh	en you	returned	back	to t	the hotel	l to
stand	and wai	t there, wh	ere was	their c	ar at	that	t time?	
Α	Well,	it was just	pullin	g up whe	n I g	ot th	ere.	
	Ö	Do you rem	ember w	hen Pasc	ual f	irst	got into	•
that c	ar?							
Λ	Yes.							
	Q	How far we	re you	away fro	m the	car	at that	time?
Α	About	ten fest aw	ay. In	that are	a.			
	Q	About ten	feet aw	ay?				
Α	Somewh	eres in tha	t area.					
	Q	Before he	left, d	id you g	et cl	oser	, manage	to
get. cl	oser to	the car th	e first	time Pa	scual	got	in?	
Λ	I may	have been c	loser a	s the ca	r pul	led	away.	
	Q	Well, did	you hav	e occasi	on to	100	k inside	the
car at	that t	ime?						
A	I don'	t recall.						
	Q	Do you red	call see	ing an	nvelo	pe,	the one	
descri	Lbed now	, the first	time -	-				
À	At the	at time I di	ldn't se	e the er	rvelop	e, n	.0.	
	Ω	And the to	o peopl	le that w	vere s	eate	d in the	fron
car 1	and von	ever seen t	them bef	fore?				

1		Sottilia-cross 233
2	A	Oh, yes.
3		Q You have seen them before?
4	A	Oh, yes.
5		Q And did you know them by name?
6	A	Not by name.
7		Q Had you ever placed any of them under arrest?
8	A	No.
9		Q Had you personally tailed either one of them?
10	A	Yes, sir.
11		Q Which one had you personally tailed?
12	A	I had both under surveillance, at one time or another
13	prior	to that.
14		Q Officer, Pascual was arrested?
15	A	Yes.
16		Q Is he present in Court today?
17	A	Gilberto Pascual?
18		Q Yes.
19	A	I didn't see him.
20		Q Was he ever present in any other Court
21	procee	ding?
22	A	Yes.
23		Q In what Court proceeding was that?
24	A	In Supreme Court, in New York County.
2.5		Q Was there a trial at that place?

1	Sottile-cross 234
2	A There was a hearing.
3	Q A hearing on a motion to suppress?
4	A Yes, sir.
5	Q Before what judge?
6	A May I look at my notes?
7	Q Sure.
8	A I don't recall his name.
9	Q Do you recall the name of the attorney that
10	represented Pascual?
11	A He
12	Q Was it
13	A I don't recall his name, no.
14	The Assistant District Attorney was Daniel Fitzgerald
15	The Culkin was the Judge, Judge Culkin.
16	Q The motion to suppress granted or denied? —
17	A I don't know because Pascual didn't showup that day
18	when it was going to be decided. The Judge reserved decision
19	and that day he didn't show up.
20	Q What day was that, Officer, the Judge reserved
21	decision?
22	A I'm sorry. I thought I had it written here.
23	Q . Can you give me approximately the month?
24	A It was the spring. I'm not sure of the date.
25	Q Do you remember what date you had one or both

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Yes.

possibly operator and the passenger of the car under surveillance?

I had them under observation -- under surveillance in the period September 2nd to the time of the arrest, during that period. September 1st or 2nd.

Would that include wiretaps, too?

No. A

> MR. POVERSTEIN: I have no further questions of the witness, your Honor.

> > THE COURT: All right.

I see you have consulted with all defendants. I take it there are no other questions.

Do you have any more? You have another one, Mr. Blackstone?

MR. BLACKSTONE: Just one.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. BLACKSTONE:

The lights that you say came from the marquis, the marquis was above the car; is that correct? The lights were from above?

Yes.

Is that correct?

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-	A 102
1	Sottile-redirect 236
2	REDIRECT EXAMINATION
3	BY MR. SCHLAM:
4	Q Detective Sottile, do you have any photographs
5	depicting this package?
6	A Yes, sir.
7	Q Can I have them, please?
8	A These are
9	MR. SCHLAM: May I have this photograph
10	. marked, please.
11	THE CLERK: Photo marked as Government
12	Hearing Exhibit 11 for identification.
13	(So marked.)
14	Q Detective Sottile, looking at Government's
15	Exhibit 11 for identification, is that a photograph of the back
16	that you seized on September 11th?
17	A Yes, sir.
18	Q Does that photograph accurately portray the
19	condition of the bag at the time that you made the seizure?
20	A That's correct.
21	MR. SCHLAM: I offer this into evidence.
22	THE COURT: Any objection?

MR. MARCUS: May we see it?

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MR. POVERSTEIN: Mr. Schlam.

THE COURT: Any objection, gentlemen?

MR. POVERSTEIN: Your Honor, I'd just like to find out as to when the picture was taken.

THE WITNESS: I took the photograph Friday,
September 11th, in the afternoon, after I arraigned
the defendants, prior to delivering the evidence
to the police laboratory.

That's my car I took it in. That's my -my suitcase underneath it, which holds my photographic equipment.

There was a light drizzle out and I didn't want to get it wet. That's why I couldn't get too good a shot but this photograph wasn't fixed permanently. I am able to fix better photographs when I get negatives developed.

THE COURT: Admitted.

Anything further?

MR. SCHLAM: I have nothing further, your Honor.

THE COURT: Thank you, Officer.

THE CIERK: 11 in evidence.

(Photograph so marked in evidence.)

THE COURT: Do you have any further

witnesses?

MR. SCHLAM: No, your Honor.

THE COURT: Do the defendants want to call witnesses?

MR. BLACKSTONE: We'd like to call
Mr. Olate but he's not here.

THE COURT: I take it the hearing is closed on this issue?

MR. POVERSTEIN: Your Honor, the hearing can be closed on this issue. I would ask your Honor for just one kind indulgence, to reserve our right to possibly re-open it in view of the fact there had been a prior hearing and I would like to see if I can get some information before Judge Culkin and Dan Fitzgerald was the District Attorney. I'd like to find out who represented Pascual at that time.

Possibly I might come up with some further information.

THE COURT: Of course.

MR. POVERSTEIN: Thank you very much, your Honor.

THE COURT: Absent any further information, the motion to suppress is denied.

Any further motions?

MR. BLACKSTONE: Is your Honor denying

that on the basis of the lack of standing?

THE COURT: No. On the basis of the probable cause to arrest and seize. Under these circumstances.

I credit the testimony given by this detective. I think if he is believed -- and I do believe him -- his activities were perfectly straightforward and legal. No violations of anybody's Constitutional rights so far as I can tell.

Are there any further motions you gentlemen want to make now?

MR. MARCUS: Not a motion, your Honor, but I would like to put the Court on notice that there is an ongoing and continuing, shall I say, medical consultation with regard to Mr. Gernie.

I would not like the Court to feel that I would be acting in surprise on Monday morning.

MR. SCHLAM: Your Honor, at lunchtime today
I received a call from Dr. Loyez, who is now the
primary physician concerned with Mr. Gernie's
case, and Dr. Loyez told me that he had occasion
to examine him today and in his opinion Mr. Gernie
is ready to leave the hospital today and there
is no medical reason in his opinion that Mr. Gernie

Quintanilla to please take me to 42nd Street to retrieve the

car.

Once I had retrieved the car, I went to my apartment.

Once having arrived at the apartment, I called Mrs. Pineda

on the phone and I told her that I was going to her place.

After speaking on the telephone, I took the shopping bag

containing the four kilos of cocaine and went to the apartment

of Mrs. Pineda.

(Continued on next page.)

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Did you arrive at her apartment? Yes, sir.

Q Approximately what time?

Approximately, it was some time after 6:00 o'clock in the morning.

Q Did you drive there?

Yes, sir. A

Q

O Describe the car.

I was driving a blue Mustang with a white top which Mr. Victor Hernandez had loaned.

Now, when you arrived at her apartment, what did you do?

A When I got there, I took the shopping bag which contained the packages. I went to the apartment. I gave the cocaine to Mrs. Pineda. She took the shopping bag and then she took it to the kitchen.

Continue.

I asked Mrs. Pineda if she had telephoned Hernandez brothers to have them come pick up the cocaine and she answered that she had.

Now, did there come a time that the Hernandez brothers arrived?

Yes, sir.

Q Which Hernandez brothers arrived?

you recall.

Mr. Martin Hernandez and Mr. Victor Hernandez arrived.

Q Now, did Mrs. Pineda tell you which of the Hernandez brothers she had spoken to on the telephone: if

I don't remember if she said any name. I don't --I don't remember.

Now, what happened when Martin and Victor Hernandez arrived?

When Martin and Victor Hernandez arrived, they went into the apartment. Mrs. Pineda took them to the kitchen

where the four kilos were. She took the four kilos and put

them in the shopping bag, gave it to them, and took them

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to the living room.

What happened in the living room?

came a time in which Martin Hernandez and Victor Hernandez

After being in the living room for awhile, there

left, but before leaving, Mrs. Pineda took the shopping bag

containing cocaine and gave it to Victor Hernandez.

Do you recall Victor and Martin Hernandez leaving the apartment?

Well, when Madelaine Pineda passed the shopping bag

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to Victor Hernandez, Mr. Hernandez, Victor, and Mr. Hernandez,

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Martin, said good-bye to me and I went to the bedroom so

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that my back was to them when I left.

THE COURT: Is that the end of this witness MR. SCHLAM: Your Honor, I am waiting for an exhibit. I think it will be down in just a THE COURT: Is that the end of this witness MR. SCHLAM: Pretty much; yes, sir. THE COURT: All right. We will wait for it. And then we can have cross-examination We are going to start tomorrow at 11:30, ladies and gentlemen. I have other matters before then, but we are not finished yet this I want to remind you again, but we are not finished yet this evening.

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I want to remind you again not to discuss this matter with anyone. Keep an open mind.

Don't go ahead and go to any of these places that have been described and look at them.

Don't do any research.

Just listen to what happens in the courtroom.

(Mr. Schlam approaches the bench.)

MR. SCHLAM: Your Honor, it is in the safe and the fellow that can open the safe is not at his desk right now.

THE COURT: All right. The exhibit is not available.

MR. SCHLAM: No.

THE COURT: You can complete your direct tomorrow.

MR. SCHLAM: Yes, sir.

THE COURT: Good-night, ladies and gentlemen. 11:30 tomorrow, promptly, please. Have a pleasant evening.

(The jury leaves the jury box.)

THE COURT: Is there anything else,

gentlemen? Any applications?

MR. LANNA: Not so much in connection with

the case, I don't know whether this is proper through your Honor. The defendants advised me that when they are brought down here, it is usually 7:30 in the morning.

Is there any reason why it should be so early tomorrow?

THE COURT: Well, it is up to the marshals. We have a limited number of vehicles, and there is a problem of feeding and searching, and I am sure the marshals don't want to get over here any earlier than they have to. They will do what they can for you, but it is really impossible because of the number of people and the shortage of personnel.

(Trial adjourned to 11:30 A.M., Thursday, December 9, 1971.)

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THE COURT: All right, gentlemen.

Shall we bring in the jury?

Bring in the jury, please.

Good morning, everybody.

MR. SCHLAM: Good morning, your Honor.

(The jury entered the jury box.)

MARIO SEPULVEDA, having been previously duly sworn, resumes the witness stand for further direct examination.

> (Maria Alena Cardinas was previously duly sworn by the Clerk of the Court.)

> > THE COURT: Are we prepared?

MR. SCHLAM: Yes, sir.

THE COURT: I'm sorry, we were delayed a little this morning. There were other cases that took a little longer than we expected.

DIRECT EXAMINATION

BY MR. SCHLAM: (Continued)

Mr. Sepulveda, do you know whether or not Madelaine Pineda was receiving any money for the services which you have described she performed?

Yes, sir.

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Sepulveda - direct 585
Q How much money was she getting?
A Well, she told me that she received \$500 for each
kilo of cocaine that she got for the Hernandez brothers.
MR. SCHLAM: Would you mark this,
please?
THE CLERK: One brown bag with con-
tents in it marked as Government's Exhibit
7 for identification.
(So marked.)
THE COURT: What number is that?
THE CLERK: 7.
BY MR. SCHLAM:
Q Would you please take a look at Government
Exhibit 7 for identification and tell me if you recognize
it.
(Exhibit for identification is shown
to the witness.)
A Well, this shopping bag was the one that I took on
the 6th of November to Mrs. Pineda's home.
Q Is there anything in that shopping bag?
A Yes.
Q Do you recognize what is in that shopping

25 A Yes, sir.

bag?

BY MR. BLACKSTONE:

23

Is your name, sir, pronounced Dragon or

24

Dragone?

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Dragon.

Tuckett - direct

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Q In Conversation No. 5, the outgoing call, do you know whose name that is?

A That is the instrument registered to Enrique Hernandez.

Q Moving along to Conversation No. 9 -- Withdrawn.

Moving along to Conversation No. 10, 1, 2, 3, 4, 5, 6, 7, 8, 9 -- on the 11th line, the outgoing voice says, "Yeah, save me a couple, ah." What, in your expert opinion as a narcotics detective does that mean?

A The defendant James Martin was making a request of Enrique Hernandez to save him, James Miller, 2 kilos of narcotics.

Detective Tuckett, calling your attention now to November 6, 1970, were you working on that date?

A Yes, I was.

Q Where were you working?

A In the City of Yonkers in the vicinity of 709 Warburton Avenue.

Q Where were you particularly?

A I was in my private vehicle parked on Warburton Avenue, the east side of Warburton Avenue south of the south parking lot of premises 709 Warburton Avenue.

Q Calling your attention to approximately

	Tuckett - direct							
2	6:15 in the mouning, do you recall receiving a communica-							
3	tion from anyone?							
4	A Yes, I do.							
5	Ω At that time did you have a walkie-talkie							
ó	with you?							

A Yes, I did.

Q		Do you know	whether	or i	not	your	brother
officers	had .	a walkie-tall	kie with	the	m?		

- A Yes, they did.
 - Q Were you on surveillance at this time?
- A Yes.

- Q Do you know how many other officers were on this surveillance?
- A About five of us.
- Q And you were in radio contact with all of them?
- A That is correct.
- Q From whom did you receive this communication at approximately 6:15 in the morning?
- A Detective Cruet.
- Q As a result of this communication, did you do anything?
- A I began to look for a male known to him only as Mario at that time.

1			Tuckett - direct
2		Q	Had you seen this individual named Mario
3	prior	to this?	
4	A	Yes, I	had.
5		Ď	Had you seen him in the company of persons
6	whom y	ou see i	in the courtroom today?
7	Α '	Yes, I	have.
8		Q	Tell us whom you had seen him in the company
9	of.		
0	A	Victor	and Martin Hernandez and Madelaine Pineda.
1 -		Q	Did there come a time that you saw Mario?
2	A	Yes.	
3		Ŏ	Approximately what time was that?
4	A	About	5:45 or so.
5		Q	Where did you see him?
6	A	He was	driving north on Warburton Avenue in a blue
7	Mustan	ıg.	
8		Q	When you saw him, did you do anything?
9	·A	Yes, I	got out of the vehicle in which I was seated
10	and pr	cceeded	towards the entrance of 709 Warburton Avenue
,		0	Tell us what happened then

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Mario parked his vehicle on the east side of Warburton Avenue south of the Arthur Street intersection, got out of the vehicle carrying a shopping bag, and proceeded to 709 Warburton Avenue.

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Tuckett - direct

What happened then?

THE COURT: Please refer to Mario by the name you subsequently found, so we won't confuse the jury.

A Is that Sepulveda?

Q

MR. POVERSTEIN: Could we have the jury forward the transcript so they won't be distracted by looking at it and listening to the evidence at the same time?

THE COURT: I observed nobody distracted a bit. They are just listening to the witness.

- Q Did you subsequently learn Mario's full name?

 Yes, he was identified to me as Mario Sepulveda.
- Q What happened when you arrived in the apartment house?
- I proceeded to the elevator and I held the elevator open and Mario Sepulveda entered the elevator just in front of me.
 - O Continue.
- A I pressed the button for the seventh floor. Mario Sepulveda pressed the button for the eighth floor.

While in the elevator I looked into the shopping bag which he was carrying and I could make out

After I reached the seventh floor I got off of the elevator and went up the fire stairs located right next to the elevator and proceeded to the eighth floor.

After reaching the eighth floor, I looked out into the hallway, and still seeing Mario Scpulveda carrying the shopping bag entering an apartment on the eighth floor, I don't recall the number.

- Q Do you have knowledge about the tenants of this particular apartment, the identity of the tenants?
- A Yes, I do.
 - Q Who were the tenants of that apartment?
- A Madelaine Pineda.
 - Q Continue.

the contents of the shopping bag.

I stepped into the hall and went to the elevator, looked at the elevator, and sent it back down to the lobby. At the time the elevator was empty.

I returned to the eighth floor landing and stepped into the fire stairway and maintained surveillance on the apartment in which I observed Mario Sepulveda enter.

- Q Did there come a time that you saw anything else with respect to this apartment?
- Yes, about seven o'clock or so Victor and Martin

-Tuckett - direct

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Hernandez were admitted to the apartment of Madelaine Pineda by Madelaine Pineda.

Q Did there come a time when you saw anybody leave the apartment?

A Yes, shortly after that Victor and Martin Hernandez left the apartment of Madelaine Pineda.

At that time Martin Hernandez was carrying a shopping bag which I observed taken into the apartment by Mario Sepulveda.

Did you observe Martin and Victor Hernandez enter the apartment?

Yes.

Were either of them carrying anything when they entered the apartment?

A No.

What did you do when you saw them leaving the apartment? By "they," I mean Victor and Martin Hernandez.

When I observed Victor and Martin Hernandez leaving the apartment, I stepped out of the hallway and walked to the apartment of Madelaine Pineda. As I did this, coming abreast of them, and I looked into the shopping bag, identified myself and placed them both under arrest and started to run to the apartment door of Madeline Pineda which was

1		H 121 Tuckett - direct
2	still c	pen.
3		Q When you looked at the shopping bag, did you
4	see any	thing inside?
5	A	Yes.
6		O What did you see?
7	A	A large white bundle containing what I believed
8	were a	kilo or half kilo of narcotics.
9		Q Is this the same bundle you saw in the
10	clevato	or?
11	A	It appeared to be.
12		Q Continue.
13	A	As I reached the apartment door of Madelaine Pineda
14	it was	shut, striking me in the face. The door snapped
15	open ar	nd I entered the apartment and placed Madelaine Pineda
16	and Mar	rio Sepulveda under arrest.
17		Ω Detective Tuckett, I'd like you to take a
18	look at	t Government's Exhibit No. 7 in evidence.
19		Tell us whether that is the whether that
20	looks	familiar to you.

This is the shopping bag which I observed Mario Sepulveda take in the apartment of Madelaine Pineda.

> MR. SCHLAM: I have no further questions, your Honor.

> > THE COURT: Any cross-examination,

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MR. DILLON: No objection.

MR. LANNA: No objection.

THE COURT: Admitted.

(So marked.)

Q Detective Sottile, calling your attention now to September 10th of 1970 at approximately the late evening hours, do you recall where you were?

A Yes, sir.

Where were you?

A I was in the vicinity of -- of the Century-Paramount Hotel.

NOw, approximatel; what time of the day was this?

This was in the area of 11:30 p.m. on the 10th of September until approximately 12:30a.m. on the 11th.

Now, did anything happen during the time that you were in the hotel?

Yes, sir.

And would you tell the Court and the Ladies and Gentlemen of the Jury what happened? Keeping your voice up, please.

A ON the basis of information that I had received at about 11:00 p.m. that same night I went to the Century-

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Paramount Hotel at 235 West 46th Street in Manhattan and I spoke to the manager and made some inquires about a Gilberto Pascual, who was in Room 1717.

I informed the manager that I was going to be in the area of the hotel premises and immediately in the vicinity.

A short time later I was in the bar which adjoins and is part of that hotel. In the bar I recognized the man who fit the description of one who was described to me as Gilberto Pascual, living in Room 1717 of that hotel.

He further attracted my attention because he had been poured a drink at the bar and he left it there and he went outside and he was looking around outside, up and down the block.

And he kept looking at the traffic which drove into 46th Street from Eighth Avenue. And I kept him under observation, and he twice left a drink at the bar.

After he had been outside, he came back again and ordered a drink and that second drink, he left that one without touching it.

And I went and got the management of the hotel and when Gilberto Pascual stepped out of the bar again the manager identified him as being the man from Room 1717, and he further provided me with the information that the man when he paid his bills he -- it was usual for him to have --

MR. LANNA: Your Honor, I am going to object to it as being incompetent, anything that was usually done, said by the management.

THE COURT: Yes, sustained.

(Continued next page.)

A Well, the manager identified him to me as being that man. I questioned the manager as to whether or not the man had a visible means of occupation or whether he listed it with the hotel and the manager provided me with the information.

MR. LANNA: Objection.

THE COURT: Sustained.

Q As a result of the conversation you had with the manager of the hotel, did you do anything?

A Yes, sir. Rased on the information that I had both from the manager and from other sources I kept the man under observation. What he did, he kept going back and forth to the street looking up as if he was waiting for a car to arrive. He watched every car that came into the block, and he was doing this for a period of time.

And at the time he was doing this, there were some policement, uniformed policement from the 18th Precinct who were in and around the hotel concerned with the possible quarantine of the hotel because of people in the hotel from an international flight who were apparently ill from a possible communicable disease and there were police all around concerning this.

Mr. Pascal showed an interest in the police being there and in my opinion he as very nervous.

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Sottile - direct

MR. LANNA: I object to his opinion.

THE COURT: No, I will allow that, but I am going to cut you off and have this read back to you when you come back.

I have an immigration and naturalization hearing. Will you excuse me for fifteen minutes and we will take a recess.

(The jury left the courtroom.)

THE COURT: Get this stuff straightened out right now.

MR. SCHLAM: Yes, your Honor.

(A recess was taken.)

THE COURT: All right, continue.

JAMES SOTTILE

resumed.

DIRECT EXAMINATION

Yes.

BY MR. SCHLAM: (Continued)

You were telling us about the evening, late Q evening of September 10, 1970.

Would you continue, please, Det. Sottile?

Q Keeping your voice up, please.

I had Pascal under observation. As I said, there came a time when Pascal came out again from the bar and walked to

the corner of Eighth Avenue, looked down into the traffic and came back, and he did that twice.during that time.

And then there came a time that Pascal was standing in front of the hotel under the marquee and I was standing there and another officer, a detective in civilian clothes as I was. And the uniformed policemen who had been in front of and in the hotel lobby got into their radio cars and pulled away, and Pascal was standing there looking at all this. We were standing with him. I got into a conversation with Pascal about the cops who were there, what they were doing regarding the possible quarantine of the hotel and if they were going to close it down and nobody could go in and out and so forth and we talked about the relief by the fact that they were going away and there was no need to quarantine the hotel.

After the policemen left 1 got into a conversation with Pascal about a Rolls Royce that was parked directly under the marquee of the hotel. It was an expensive car. We got into a conversation as to how much the car might cost, in the area of twenty thousand dollars and how it would be to own one and so on.

Pascal still kept looking around at the traffic coming into the block.

There came a time when a car pulled up in front of the

hotel and this was a 1969 maroon Ford sedan registration
1Z5270. I immediately recognized this car as a car I had
followed the day before from the Chile Lindo restaurant
and in fact the driver of the car was Nicodemus Olate -it was Justo Quintinilla, and sitting in the front seat
was Nicodemus Olate.

Now, Ihad seen them at the Chile Lindo prior to this and I had taken their photographs, and I immediately recognized them and that car whichwas the subject of my surveillance in the past.

Pascal got into the back seat of the car and they proceeded to drive off.

I got into another automobile and followed.

This car drove up to the corner of Broadway and 46th Street, this is an eastbound street, and they made a right turn and went south on Broadway.

Quintinilla was driving; Olate was in the right-front seat; and Pascal was hunched over the front seat in conversation with these two people.

Pascal kept looking back as he was talking. They drove very very slow around the block. They went south on Broadway and made a right on 45th Street going west.

Now, we followed them, and again they were in conversation all during this time with Pascal looking around hunched

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over and Olate talking to him while he was hunched over the seat.

They went up to Eighth Avenue and they made a right going north and back to the hotel and they had gone in a big circle around the block.

Because they were going slowly we were able to anticipate the move and arrive at the hotel just before they did.

I got back in the same position where I had been talking to Pascal prior to the arrival of the car.

I was standing under the marquee. The car pulled up, they waited a minute in the car, and I was standing under the marquee which had floodlights on it, and looking into this automobile. And in the front seat of the automobile was a package. And this was a loosely constructed envelope that was in poor condition in that it was ripped and protruding from it was a plastic bag containing a white substance.

> MR. SCHLAM: Excuse me, Detective Santile, wouldyou stop for just a minute.

> > May I have this marked for identification?

THE COURT: Yes.

THE CLERK: Photograph marked for identification as Government's Exhibit 13.

Q	1	Nill y	ou plea	se take	a	look	at	Government's
Exhibit 1	13 and	tell	us what	that i	s,	Detec	tiv	e Sottile?

This is a photograph of the evidence which I am speaking of which I saw in that car, and I took this photograph on Friday, September 11, 1970, sometime after I had seized it.

Q Does that photograph portray the envelope in the condition that you saw it when it was in the car?

Yes, sir, it does.

MR. SCHLAM: I am going to offer this exhibit into evidence.

MR. BLACKSTONE: No objection.

MR. LANNA: No objection.

THE COURT: All right, admitted.

Q Continue, please.

A I changed my position a little bit to take another look at this thing. I could see it. It was on the front seat between Olate and Quintinilla, and I immediately recognized it to be narcotics.

They had conversation, Olate picked up the package and handedit over the back seat to Pascal.

Pascal got out of the car and as we moved towards
Pascal, Pascal ran, and we apprehended him.

Olate and Quintinilla took off in the automobile

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Yes.

towards Broadway. Once we had Pascal under control and grabbed him, he said, "I found it by the curb and I picked it up." That's what he said. But I had seen him do other-He put up some resistance and he was subdued wise. rather quickly, and I ran on foot to -- I didn't have the keys to my car - I ran to the corner of Broadway and 46th Street where Olate and Quintinilla had gone downtown on Broadway and traffic was rather light, that night, it was late at night on a weekday, and I commandeered the first thing thatcame along which was a truck, an Econo-line type van. A male Negro was driving the truck. I showed him my shield and told him to follow that car. He got very nervous, it was up to 34th Street before we caught up. At 34th Street I had him pull the car off the road and block it. I jumped out and identified myself to Quintinilla and Olate. I placed them under arrest and brought them back to the hotel.

Subsequently I arrested Olate and Quintinilla for the sale of these narcotics to Gilberto Pascal and charged Pascal with the possession of same.

Do you have the narcotics that you seized from the se individuals on December 11, 1970 with you right now?

Q

Yes.

Would you give them to me, please?

1.510

THE CLERK: Brown folder with contents
marked for identification as Government's Exhibit
14.

Photograph marked for identification now marked in evidence as Government's Exhibit 13.

(Continued on next page.)

further questions.

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CROSS EXAMINATION

BY MR. BLACKSTONE:

Detective, was the camera you were using to take photographs at the Chile Lindo equipped to take photographs at night?

A camera which is capable of taking photographs at night is as good as the film that is used and the person using it.

This camera could have been used to take photographs at night.

Were you taking photographs at night, to your recollection?

During the hours of darkness I wasn't taking photographs at this particular time.

MR. BLACKSTONE: No further questions.

MR. LANNA: No questions.

MR. KRINSKY: No questions.

MR. MARCUS: No questions.

MR. POVERSTEIN: No questions.

MR. DILLER: No questions.

THE COURT: Thank you very much.

Next witness, please.

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket Nos. 72-1335, 72-1336, 72-1440, 72-1519, 72-1529

UNITED STATES OF AMERICA,

Appellee,

-against-

EDUARDO BORRONE-IGLAR, MADELAINE PINEDA, AGAPITO GU-LEON, VICTOR HERNANDEZ, MARTIN HERNANDEZ, ENRIQUE HERNANDEZ, JOSEPH GERNIE, and JAMES MILLER,

Appellants.

BRIEF FOR THE APPELLEE

Preliminary Statement

On August 2, 1971, a one-count indictment was returned in the United States District Court for the Eastern District of New York charging fourteen defendants with conspiring to smuggle and traffic in cocaine, in violation of Title 21, United States Code, Sections 173 and 174. Of the fourteen defendants, four—Nicodemus Olate-Romero, Justo Quintanilla, Luis Carol Otey-Ampuero, and Amada Ramirez—were fugitives. The remaining ten defendants stood trial, beginning on December 2, 1971, before Judge Jack B. Weinstein and a jury. During the trial the case against Manuel Brito-Salinas was dismissed (884-885). On December 20, 1971, the remaining nine defendants—Eduardo Borrone-Iglar, Madelaine Pineda, Agapito Gu-Leon, Victor Hernandez, Martin Hernandez, Enrique Hernandez, Joseph Gernie, James Miller and Manuel Figueroa-Milla—were found guilty.

Their sentences were as follows: * Borrone-Iglar—7½ years imprisonment; Pineda—12½ years; Gu-Leon—5 years; Endique Hernandez—15 years, \$20,000 fine; Martin Hernandez—15 years; Victor Hernandez—10 years; Gernie—15 years, \$20,000 fine; Miller—15 years, \$20,000 fine; and Figueroa-Milla—5 years. All defendants, except for Gernie and Miller who are on bail pending appeal, are currently incarcerated either on the present or on other charges.

Of the nine who were convicted, all except Figueroa-Milla appealed. Seven have filed briefs. They are Pineda, Gu-Leon, the three Hernandez brothers, Gernie, and Miller.** Only Gu-Leon, Gernie, and Miller challenge the sufficiency of the evidence on which they were convicted. All the appellants raise numerous other issues, which will be dealt with in Point II of this brief.

Statement of Facts

A. The conspiracy in outline

The Government's case against appellants consisted primarily of the testimony of two unindicted co-conspirators, Mario Sepulveda and Celestino Valverde, recorded telephone conversations of six of the appellants (Madelaine Pineda, Victor, Martin and Enrique Hernandez, Joseph Gernie and James Miller) as well as quantities of cocaine seized from three of these appellants (Pineda and Victor and Martin Hernandez). This evidence showed that members of the conspiracy smuggled two shipments of cocaine into the

^{*} All the defendants except Gu-Leon and Miller were sentenced on February 18, 1972. Miller was sentenced on March 24, 1972 and Gu-Leon on March 31, 1972.

^{**} Counsel for Borrone-Iglar has moved to withdraw as counsel and has filed an *Anders* v. *California*, 386 U.S. 738 (1967) memorandum. On the basis of that memorandum and this brief, the Government will cross-move to dismiss his appeal.

United States: the first, consisting of 21 kilograms, on September 6-7, 1970, and the second, consisting of 40 kilograms, on November 5-6, 1970. The evidence further showed the distribution and the proposed distribution of the drugs to other members of the conspiracy functioning at various levels and in varying capacities.

The modus operandi employed in porting and distributing both shipments was the same. The cocaine was placed aboard the Chilean ship Maipo in Chile and brought to New York. The initial receivers were the defendant, Nicodemus Olate-Romero (hereinafter "Olate"), later a fugitive, and Sepulveda, both Chilean nationals residing in New York City. The cocaine was brought ashore by a skindiver, the appellant, Eduardo Borrone-Iglar (hereinafter "Borrone") after the cocaine had been thrown overboard to him by seamen conspirators, including the fugitive, Luis Carol Otey-Ampuero and the defendant, Manuel Brito-Salinas. Helping to make and carry out the arrangements for removing the cocaine from the ship were Valverde and the appellant, Agapito Gu-Leon, as well as the fugitive Justo Quintanilla (who helped on the first shipment) and the defendant Manuel Figueroa-Milla (helping on the second). Once this cocaine had been brought into the United States, Sepulveda and Olate, with the assistance of the appellant Madelaine Pineda, sold the cocaine to the appellants Enrique, Martin and Victor Hernandez. These three brothers, acting as middlemen, in turn, sold the cocaine to various persons, including the appellants James Miller * and Joseph Gernie.

B. The conspiracy in detail

1. The first shipment

In July, 1970 Sepulveda's sister Elena, also a Chilean national, visited him in the United States. Sepulveda asked

^{*}Throughout the trial nicknames or abbreviations of names were frequently used. Thus Enrique Hernandez was generally referred to as "Hank"; Martin Hernandez as "Pee Wee"; Luis Carol Otey-Ampuero simply as "Carol"; James Miller as "Pluggie"; and Manuel Figueroa-Milla as "Pajarito".

Elena to take \$10,000 to Chile to buy cocaine and to give the cocaine to a Chilean seaman called "Carol" (the fugitive defendant, Luis Carol Otey-Ampuero) who would then bring it to the United States aboard the Chilean ship Maipo. Elena agreed and on July 28, 1970 left for Chile. Several days later Sepulveda called his sister in Chile who told him that she had given "five shirts"—a prearranged codeword for five kilograms of cocaine—to Carol who would be sailing shortly on the Maipo. The Maipo was to arrive in the United States at the end of August (372-377).

In the middle of August 1970, Sepulveda informed Celestino Valverde, an American merchant seaman, that he had a shipment of cocaine aboard the *Maipo* and asked him to check on the date of the ship's arrival in the United States. A day or two later, Valverde reported back that the *Maipo* would arrive in Savannah, Georgia on August 28. At this time, Valverde agreed to go to Savannah to meet Carol there and, if possible, to remove the cocaine from the *Maipo* (377-380, 827-830).

On August 28, Valverde arrived in Savannah and met Carol in his cabin aboard the *Maipo*. Upon learning of Valverde's mission, Carol warned him that the ship was very "hot," that Valverde should get off and that they would meet again the next day at the pier. As agreed, the two men met the next day. At this meeting Carol explained to Valverde that the Captain of the *Maipo* had found some cocaine on the ship and had thrown it overboard. Sepulveda's cocaine, however, was safe (830-835).

On August 30, Valverde returned to New York and informed Sepulveda about his conversations with Carol. Later that day Sepulveda met a friend, Juan Besolo, and told him about Carol's problems aboard the *Maipo*, noting that luckily his five kilograms were still safe. Besolo mentioned that a friend of his, Nicodemus Olate-Remero, was also waiting to receive cocaine from Carol. Besolo offered to introduce

Sepulveda to Olate so that the two of them might join forces in getting their cocaine off the ship (380-386, 835-836).

Two days later, on September 1, Besolo introduced Sepulveda to Olate, and to an associate of Olate's, Justo Quintanilla. At that time Sepulveda and Olate agreed to meet the next day, September 2, to discuss their joint problem. As planned, this meeting took place at a restaurant in Manhattan called the Chile Lindo. There Sepulveda told Olate about the situation aboard the Maipo as related to him by Valverde. After the two had discussed possible methods for retrieving the cocaine from the ship, Sepulveda finally suggested using a skindiver. This idea appeared feasible since Sepulveda knew a Chilean by the name of Eduardo Borrone who was an experienced skindiver. No final decision on this plan was then made, as Carol still had to be consulted. Olate mentioned that he had agreed to meet Carol at 8:00 P.M. on the first day the Maipo arrived in New York. Olate invited Sepulveda to accompany him and Sepulveda agreed (384, 386-394).

On September 4, Olate met Sepulveda at the Chile Lindo and informed him that the Marpo had arrived. That evening Olate, Quintanilla, and Sepulveda drove in Olate's wine-red Ford to the vicinity of the piers in Brooklyn. At about 8:00 P.M., Olate spotted Carol and another individual and called to them. The two men entered the car and Carol introduced the other man as "Brito" (Manuel Brito-Salinas), and then they all drove to a restaurant in Manhattan. En route to the restaurant, Carol told Olate about the problem aboard the Maipo (394-400, 409-410).

At the restaurant Carol told Olate that their original plan—to remove the cocaine in a truck that somehow would be gotten on the pier—was unworkable and suggested that all the cocaine be taken back to Chile. Olate objected to this idea as he had no one to go to Chile to get his cocaine

and he himself had to remain in New York to await the arrival of another cocaine shipment. Sepulveda then reminded Olate of the skindiving proposal. Carol insisted the plan would require an excellent skindiver. When Olate said they knew such a man, Carol agreed to this plan. Olate told Sepulveda that he should offer the skindiving job to Borrone. Since neither Borrone nor Sepulveda spoke English, Sepulveda suggested that Agapito Gu-Leon act as interpreter for Borrone and Sepulveda when they purchased the skindiving gear. Olate agreed inasmuch as Gu-Leon was to have been a driver in Olate's original plan and had been promised a share of the proceeds even if he were not used (410-413).

After dinner Sepulveda left the others and met with Borrone. Sepulveda explained the skindiving proposal and Borrone agreed to it. Sepulveda also met with Gu-Leon who agreed to act as a translator when the skindiving equipment was purchased (416-420).

The following day, September 5, Olate, Quintanilla and Valverde went to the Brooklyn waterfront and selected a deserted pier as a base for their operations. At about the same time, Sepulveda, Borrone and Gu-Leon went by subway to Richard's Sporting Goods on 42nd Street in Manhattan where for \$196 they bought a rubber suit, flippers, a mask, and a tank. They then returned by cab to Borrone's apartment in Manhattan where they stored the equipment. After this, Sepulveda went to the apartment of Madelaine Pineda at 709 Warburton Avenue, Yonkers, N.Y. There, after picking up Pineda, he returned to Borrone's apartment and the three drove to Columbia Street, Brooklyn, where Sepulveda and Borrone, unaware that their partners had already done so, picked another base for the skindiver (420-429, 837-839).

Later that day, at the Chile Lindo, Sepulveda and Borrone met with Olate, Quintanilla and Valverde. Sepulveda

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reported the purchase of the diving equipment and the selection of a base. When Olate mentioned his own selection, all five of them drove to the piers where Borrone agreed to Olate's selection (429-431, 839-840).

The next day Sepulveda again met Olate and Quintanilla at the Chile Lindo. Olate said that he and Carol had decided to remove the cocaine from the Maipo that night. Olate told Sepulveda to be back at the Chile Lindo at 6:00 P.M. As agreed, at 6:00 P.M., Sepulveda, Olate, Quintanilla and Valverde met at the Chile Lindo and picked up Borrone who was wearing the rubber skin diving suit under his street clothes. All five drove to Olate's apartment on Union Street in Brooklyn. While driving there, Olate gave Borrone his final instructions. Borrone was to arrive at the Maipo at around 11 P.M. Carol would be waiting on deck and a cord would be hanging overboard. When Carol felt Borrone yanking the cord, he would throw the cocaine overboard. Valverde would wait at the pier while Borrone was in the water, and Quintanilla would pick up Borrone and Valverde at about 1:00 A.M. (432-437, 810-812).

When they arrived at Olate's apartment, Olate and Sepulveda got out of the car, and Quintanilla, Borrone and Valverde proceeded to the pier. At about 10:30 P.M. Quintanilla dropped Borrone and Valverde off. At the end of the pier Borrone put on the skindiving equipment and lowered himself into the water. Immediately, he climbed back onto the pier and removed the tank because its weight was causing him great difficulty. Borrone slid back in the water and swam toward the ship (426-437, 842-845).

Around 1:00 A.M. Borrone appeared in the water near the pier. He was pulling a bag. Valverde lowered a line and the bag was retrieved from the water. Valverde then helped Borrone back onto the pier, and together they carried the bag to the head of the pier, hid it under some boards under the pier, and waited for Quintanilla. Shortly before 1:00 A.M., Quintanilla left Olate's apartment to pick up Borrone and Valverde. When Quintanilla returned to the apartment, he told Olate and Sepulveda that he could not find Borrone and Valverde. According to Quintanilla he made two other attempts that night to pick the two men up. On both occasions, however, he returned to Olate's apartment without them. At 6:00 A.M., Borrone and Valverde left the pier, leaving the cocaine-iaden bag hidden there 437-439, 845-849).

The same morning, September 7, Sepulveda called Borrone who said everything went fine except that he and Valverde had not been picked up. Borrone also said that because they had not been picked up, he and Valverde hid the bag of cocaine at the pier and that it was still there. Later that morning, Olate, Quintanilla, Borrone and Sepulveds drove to the pier. Quintanilla and Borrone found the bag in its hiding place, and Olate suggested that they take it to Celestino Valverde's house. The four of them immediately set out for Valverde's house, and in the early afternoon they arrived in the vicinity. Borrone went into the house alone and was told by Valverde that it was safe to bring the bag in. Borrone and Quintanilla carried the bag into the house where Olate opened it. As expected, they found 21 packages, each of which contained a kilogram of cocaine. Five of the packages were marked with a red X. Those were the ones that had been sent to Sepulveda by his sister (439-443, 450-454, 850-854).

2. The sale to the Hernandez brothers

After receiving their cocaine, Olate asked Sepulveda what he was going to do with his five kilograms. Sepulveda told him that he would sell them to Madelaine Pineda who in turn would resell the cocaine to the Hernandez brothers. Olate asked Sepulveda if he could arrange to have five of his (Olate's) sixteen kilograms sold in that way. After making a telephone call to Pineda, Sepulveda told Olate that he could sell five kilograms for Olate to the Hernandez brothers

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through Pineda. Sepulveda then took ten kilograms (five of his and five of Olate's) and went to meet Pineda at 242nd Street and Broadway. Together they drove to her apartment where a while later Martin and Hernandez picked up the ten kilograms of cocaine (454-465, 854-855).

Sepulveda had promised to pay Olate \$55,000 for his five kilograms by the next day, September 8. However, by the time he was to meet and pay Olate, Pineda had collected only \$28,000 from the Hernandez brothers. Despite the fact that Sepulveda gave Olate only half the money due for his first five kilograms, when he assured Olate that the Hernandez brothers enjoyed a reputation for reliability among their business associates, Olate gave Sepulveda another five kilograms to sell to the brothers. Later that night Martin and Victor Hernandez picked up Olate's second five kilograms at the Pineda apartment (465-469, 473-484).

On September 9, in the morning, Sepulveda and Pineda drove to Enrique Hernandez' house to collect money still owed Sepulveda and Olate. Enrique told him that at that moment he and his brothers were in the process of collecting the money themselves and that as soon as they got it they would pay. During the time Sepulveda was there, Enrique gave him \$13,000. Later, Sepulveda, feeling that Olate would be unhappy with such a small amount, went to see an associate of his, Amada Ramirez. She agreed to loan him the balance of money due Olate for the first five kilos. During the afternoon of September 9 Sepulveda completed payment to Olate for the first five kilograms and promised to pay him the next day for the second five kilograms. Around 4:30 or 5:00 P.M. at Pineda's apartment, Martin Hernandez paid Sepulveda another \$30,000 (484-495).

On September 10, in the morning, Pineda received an additional \$29,000 from Enrique Hernandez. At around 9:00 P.M., Sepulveda paid Olate \$55,000 for the second five kilograms in a car parked on 29th Street and Ninth Avenue

in Manhattan. Sepulveda reminded Olate that Olate had promised to give Sepulveda's associate, Amada Ramirez, two kilograms of cocaine. Olate said he would go home and get the cocaine and meet Sepulveda again at midnight (500-504).

The meeting never took place because at about 11:30 P.M. Olate and Quintanilla were arrested by the New York City Police.* Thus, at midnight, when Sepulveda went to meet Olate, no one appeared. After waiting a while, Sepulveda left and went home (504-505).

The following day, Sepulveda went to the Chile Lindowhere he met Borrone and Valverde who told him that Olate and Quintanilla had been arrested. At this time, Sepulveda also paid Borrone \$1,500 for his efforts in removing the cocaine from the Maipo (511-513, 856-858).

3. The resale to Miller

Meanwhile, an investigation by the New York City Police Department was focusing on drug trafficking by one James Miller. In the late afternoon of September 9, 1970, Miller was observed as he left his apartment house and entered his late model Mercedes-Benz. He drove to 148th Street and Bradhurst Avenue in Manhattan and there passed a shopping bag to Enrique Hernandez. On the same day, the police put into operation a previously authorized wiretap on Miller's telephone. One of the first conversations overheard was between Miller and Enrique Hernandez. It concerned a dispute about money owed by Miller to Enrique (964-965, 967-671, G.E. 16—Conv. 1**).

^{*}The two were arrested after Olate delivered two of his remaining six kilograms of cocaine to a third person. The details of the arrest are set forth in the transcript at pp. 941-959.

^{**} G.E.—Government Exhibit. Conv.—Conversation.

Five days later, on September 14, another telephone call between Miller and Enrique Hernandez was intercepted. Miller asked Enrique: "What's happening." Enrique said that he had "one or two left." Miller then asked Enrique "to hold one for me." Enrique agreed, but insisted that Miller see him that very day. Later that day, Miller received a call from one Nelson in Boston who ordered "1/2 of one" (G.E. 16—Convs. 2 and 3).

On September 16 Miller received a telephone call from a person who identified himself as Joe. Joe asked Miller if he remembered "the matter we spoke of" and Miller said he did. Joe then asked Miller if he could "take care of that for me." Miller said: "I can call up now and find out." Miller then called Enrique Hernandez but the line was busy. Almost immediately Joe called Miller again and Miller told him "to stay right there, the phone was busy when I called." Miller then dialed Enrique Hernandez' telephone again and Enrique's wife, Joan, answered. She said she didn't know where Enrique was. Miller wondered whether "there [was] anything there." Joan replied, "I don't, you know, I usually know where it's at but I don't find anything there." Joan then added that Enrique "hasn't spoken to me about business in a couple of days or something. I don't know what he is doing." Miller responded: "Let me call his brother, maybe his brother knows." Miller then called Victor Hernandez but the child who answered the phone said Victor wasn't there. Miller then called Joe back: "You'll have to wait till I get in touch with him. His wife says he is not there you know. He will probably call me about 9 o'clock. If not, I have to give you some of what I got. Will that be alright?" To this, Joe answered: "Sure" (G.E. 16--Convs. 4-9).

4. The second shipment

On September 9, the same day that Sepulveda completed paying off Olate, he, Olate and Quintanilla met Carol and Brito to pay them for bringing the cocaine to New York. In the course of their meeting, Olate inquired whether Carol was willing to bring in more cocaine on the Maipo's next voyage. Carol agreed and added that he would bring as much cocaine as was given to him in Valparaiso (Chile) (495-500)

On September 14, the Hernandez brothers still owed \$65,000 for the cocaine which Sepulveda delivered to them on September 7 and 8. On the 14th, the Hernandez brothers completed paying for the cocaine (516-17). After this final payment, Sepulveda mentioned to Amada Ramirez that he could now arrange to send money to his sister in Chile so that she could buy more cocaine. It was decided that Valverde should take the money to Chile (522-523).

On September 20, Sepulveda met Enrique Hernandez in Pineda's apartment. Sepulveda told Enrique that in a couple of weeks he would have more cocaine for him (524).

On September 30, Valverde arrived in Chile. He was met at the Santiago airport by Sepulveda's sister. They went to her mother's house where Valverde stayed. About three days later, the sister, her husband, and another man came into Valverde's room where they packaged and weighed cocaine. About two days later the sister, her husband, Valverde, as well as a brother of Sepulveda put the cocaine into two cars and drove to Valparaiso. In Valparaiso, they went to Carol's house and the sister gave the cocaine to Carol (862-868).

In New York, sometime during the first days of October, Sepulveda met Olate who had in the meantime been released on bail. Olate told Sepulveda that he too had cocaine coming on the Maipo. Olate asked Sepulveda to loan him \$4,000 to pay Borrone so that Borrone could be used again when the Maipo came to New York. Olate also told Sepulveda that Quintanilla did not want to be the driver on the next removal operation because he felt that as a result of his recent arrest he was "hot". Sepulveda then suggested Manuel Figueroa-Milla as a substitute for Quintanilla. Later, Sepulveda told Figueroa how the cocaine had been removed from the Maipo in September and asked him if he was willing to substitute for Quintanilla. Figueroa said he was (538-540, 554-557).

On October 16, Valverde returned from Chile and reported what had happened there. He also told Sepulveda that the cocaine would again be coming aboard the *Maipo* which would arrive in New York at the end of October (540-541, 869-871).

On October 17, Sepulveda went to a wedding to which the Hernandez brothers were also invited. He told them that in a few days, a 50 kilogram shipment of cecaine would arrive. During the wedding Enrique Hernandez took Sepulveda aside and told him he was going to introduce Sepulveda to his best customer. Enrique then introduced him to Joe Gernie. Enrique, who spoke both English and Spanish, was speaking in Spanish to Sepulveda who did not speak English. Gernie did not speak Spanish. Enrique told Sepulveda that Gernie was his best cocaine customer; that if Separyeda brought one, ten, fifty, or one hundred kilograms, Gernie would pay the next day; and that Enrique had not sold all fifteen kilograms from the first Maipo shipment to Gernie because Enrique had had prior commitments; Gernie however would get all the cocaine from the next shipment. Enrique then told Sepulveda that Gernie just said that Sepulveda appeared very young to be so important in the narcotics business (546-551).

Sometime during the last week of October Sepulveda told Figueroa to return the skindiving equipment that he had loaned him. Sepulveda told Figueroa that he needed the equipment immediately because Borrone was going to use it to remove cocaine from the Maipo which was due to arrive any day. Figueroa said he would return the equipment the next day (552).

The next day, Sepulveda and Figueroa went to meet Gu-Leon. Gu-Leon took the equipment out of a car and put it in the trunk of the car Sepulveda was driving. Leaving Gu-Leon, Sepulveda and Figueroa then went to Borrone's apartment to give him the equipment. Sepulveda informed Borrone that the *Maipo* was due to arrive any day (552-554).

Meanwhile, as a result of the wiretap of Miller's phone, the New York City police investigation of Miller had expanded to include Enrique Hernandez and Madelaine Pineda. The investigation utilized wiretaps first on the telephone of Enrique and later on Pineda's telephone.

On October 28, Enrique and Pineda had a monitored telephone conversation. Enrique asked Pineda: "Did Mario [Sepulveda] call you up to let you know anything?" Pineda said she expected to talk to Mario that day. Hearing this, Enrique said: "Well tell him I have everything set baby." Pineda: "No later than six days. It could be tomorrow, tonight." Enrique: "Oh, I hope it's tomorrow." Pineda: "And it's going to be big" (G.E. 20—Conv. 1).

On October 29, a conversation between Enrique and a person called "Red" was intercepted. Red made the call. In answer to Red's inquiry, "How are you?" Enrique answered, "I'm waiting . . . any day, any minute, any hour." Later in the same conversation, Enrique stated: "Well I'll

probably have to see Joe, maybe tonight or sometime, you know... because I believe then it should be here by then" (G.E. 18—Conv. 4).

Later, the same day Enrique was called by Joseph "Joe" Gernie. Their conversation was as follows: Enrique: "I just talked to your . . . Red." Gernie: "Yeah. What of it?" Enrique: "Well you know I just told him I said it could be today or tomorrow." Gernie: "Oh really." Enrique: "How is everything with you?" Gernie: "Nothing changes. Everything gets worse." Enrique: "Yeah well, I, ah, we're going to make it better." Gernie: "Aha." Enrique: "We will." Later in the conversation Gernie asked: "Alright, then how will I know?" Enrique reassured Gernie: "I'll call you up. . . . I'll definitely call you up. You're the first one" (G.E. 18—Conv. 5).

On October 29, Pineda received a call from Martin Hernandez. Pineda: "They have to see the doctor any day now." Martin: "Who does?" Pineda: "You know Juan, ah, Mario." Martin: "Right." Pineda: "And it's going to be this week because he is very sick . . . I'm just waiting" (G.E. 20—Conv. 2).

On November 1, during a telephone conversation Pineda, speaking to a second Hernandez brother, Victor, said: "I'm waiting here desperately." Victor: "So am I." Pineda: "I'm waiting for, to get the you know what." Victor: "Yeah—OK—as soon as you hear anything call me" (G.E. 20—Conv. 3).

On the same day, Pineda received a call from Enrique. Enrique: "What's happened?" Pineda: "I'm still waiting." Enrique: "Hey, listen I got so many people waiting... I need 50." Pineda: "Well, we're getting close to it." Enrique: "I need it right away." Pineda: "As soon as the ah, the ah, the you know what, the letter comes" (G.E. 20—Conv. 4).

Finally, on November 2, Pineda called Victor Hernandez. Pineda: "You know what it is, five-O." Victor: "As long as he's got some for us." Pineda: "No more 15—Five—O." Victor: "Right—O" (G.E. 20—Conv. 5).

Two days later, on November 4, Olate told Sepulveda that the *Maipo* had arrived. Sepulveda relayed this information to Borrone (557-558).

The next day, November 5, Olate told Sepulveda that inasmuch as the *Maipo* was leaving New York the next day, the cocaine had to be removed that night. Accordingly, at 9:00 P.M. that night, Figueroa dropped off Borrone and Valverde at the pier. Borrone got into the water and swam to the *Maipo*. A while later he returned to the pier with two bags which he and Valverde hid in the same place which had been used for the September shipment (558-559, 562-564, 871-881).

At about the same time, at 9:30 P.M., Sepulveda met Pineda and Martin and Victor Hernandez in the Chile Lindo. Sepulveda told them the Maipo was leaving the next day and that he and Olate needed \$40,000 (\$1,000 per kilo) to pay the seamen. It was agreed that immediately after the cocaine was removed from the ship, Sepulveda would bring four kilograms to Pineda's apartment. The Hernandez brothers would then pick the cocaine up, sell it, and deliver the cash proceeds to Sepulveda. This they would do within two hours after they had received the cocaine. Sepulveda would use the \$11,000 per kilogram purchase price to pay the seamen (565-66).

Sepulveda left this meeting and went to Olate's apartment. There he and Olate waited until about 3:00 A.M., the next morning, when Figueroa arrived with Borrone and one of the two bags. Arrangements were then made by the conspirators to recover the second bag, and this was done in

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the succeeding two hours. Finally, at about 6:00 A.M., Sepulveda took four kilograms of cocaine from one of the bags, put it in a shopping bag, and called Pineda to tell her he was coming over. Pineda in turn called Victor Hernandez to tell him Sepulveda was coming. Both calls were intercepted. Under the surveillance of police officers, Sepulveda arrived at Pineda's apartment, walked inside the building carrying the shopping bag, and entered Pineda's apartment. About five minutes later Victor and Martin left with the shopping bag. They were arrested in the hallway with the four kilograms of cocaine and Pineda and Sepulveda were arrested in the apartment (567-578, 585-586, 1059-1065, 1168-1170, 1212-1216).*

^{*}Following the federal indictment in August 1971, Enrique Hernandez, Gernie, Miller and Brito were arrested in New York. Figueroa was caught in California while Borrone and Gu-Leon were in federal prison on other charges. Olate, Quintanilla, Carol and Amada Ramirez are fugitives.

AFFIDAVIT OF MAILING

STATE OF NEW YORK COUNTY OF KINGS	
EASTERN DISTRICT OF NEW YORK	
LYDIA FERNANDEZ	being duly sworn,
deposes and says that he is employed in the office of t	he United States Attorney for the Eastern
District of New York.	
That on the 21st day of March 19	two copies 275 he served axeepy of the within
GOVERNMENT'S APPEND	IX
by placing the same in a properly postpaid franked env	elope addressed to:
Joseph I. Stone, Esc	q.
277 Broadway	
New York, N. Y. 100	07
and deponent further says that he sealed the said enveloped drop for mailing in the United States Court House, EXAMPLE of Kings, City of New York.	
	yslia ternande
Sworn to before me this	LYDIA FERNANDEZ
21st day of March 19 75	
Notary Public, State of How York No. 24-2-2-2-2-3 Qualified in Hings County Certificate filed in New York County Commission Expires March 30, 1975	